

STATE OF NEW YORK
COMMISSION ON PUBLIC INTEGRITY

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In the Matter of the Investigation
into the Alleged Misuse of Resources
of the Division of State Police

-----x

123 William Street
New York, New York

May 9, 2008
10:10 o'clock a.m.

AR-TI Recording

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E L I O T L A W R E N C E S P I T Z E R,

3

called as a witness, having been first duly sworn

4

by a Notary Public of the State of New York, was

5

examined and testified as follows:

6

EXAMINATION BY

7

MS. TOOHER:

8

Q Would you please state your full

9

name for the record.

10

A Eliot Laurence Spitzer.

11

Q And Mr. Spitzer, you are here today

12

pursuant to subpoena?

13

A I'm here because I wish to testify.

14

Q But there is a subpoena issued?

15

A That's what I've been told. I've

16

offered to testify since the initiation of

17

this inquiry.

18

Q And, Mr. Spitzer, where are you

19

presently employed?

20

A Family businesses.

21

Q And what was your previous

22

position?

23

A Governor of the State of New

24

York.

25

Q And how long were you in that

1 position?

2 A Fourteen-and-a-half months or so.

3 Q And during your time frame in
4 that position, were you familiar with Darren
5 Dopp?

6 A Absolutely.

7 Q Can you tell me who Mr. Dopp is.

8 A I think his title was either
9 Press Secretary or Communications Director
10 during my tenure as Attorney General, and
11 then he was Communications Director during my
12 tenure as Governor.

13 Q And what were Mr. Dopp's duties?

14 A To be the individual who would
15 deal with media requests, and craft a
16 communication policy.

17 Q And did he report directly to
18 you?

19 A No. He would report through the
20 Secretary to the Governor. Although on org
21 chart, virtually everybody reported to the
22 Secretary of the Governor. It was not as
23 formal as the old chart was.

24 Q And who was the Secretary to
25 Governor?

1 A Rich Baum.

2 Q And when you say it was not as
3 formal as that, regarding Mr. Dopp, what was
4 your relationship in terms of him coming to
5 you concerning official duties?

6 A I would have conversations with
7 Darren, I would say over the course of my
8 tenure as Attorney General, and as Governor,
9 multiple times.

10 Q And how long had you known Mr.
11 Dopp?

12 A I think I met him when I was
13 running for Attorney General, and he was
14 employed by Mike Bradman, I believe.

15 And I then hired him to work when
16 I was elected Attorney General.

17 That's when I began to know him,
18 to work with him.

19 Q And when was that?

20 A It would have been January 1st of
21 1999 as an employment date. I met him prior
22 to that.

23 Q And he served in what capacity
24 with you as the Attorney General?

25 A As I said, I think he was

1 either -- I'm not sure if the title was
2 Communications Director or Press Secretary,
3 but the function was that.

4 Q And when you were elected
5 Governor, he continued in a similar capacity
6 with you?

7 A His title became Communications
8 Director, Director of Communications.

9 Q And did Mr. Dopp come to you with
10 media issues ever?

11 A Ever? Sure.

12 Q While you were Governor?

13 A Absolutely.

14 Q What type of issues would he come
15 to you with?

16 A It's almost too broad a question
17 to answer, but there would be how do we
18 respond to this particular issue? Do we want
19 to generate and float this concept in the
20 State of the State? Do we want to appear on
21 this TV program today?

22 It could be anything from a micro
23 to a macro issue.

24 Q But I assume he wouldn't come to
25 you with day-to-day communications issues?

1 A Sometimes he would, sometimes --
2 it would depend upon the context.

3 Q Were there particular high
4 priority issues that he would come to you
5 with?

6 A Yes.

7 Q What types of issues would that
8 be?

9 A In the midst of budget
10 negotiations, then, obviously, how we respond
11 to media inquiries about the budget.

12 That would be a high priority
13 issue.

14 The nature of the priorities
15 would vary, based upon the rhythm of the
16 cycles, all through the tenure as Attorney
17 General, obviously different cases, different
18 efforts, different priorities would generate
19 different types of contact.

20 Q So in the Attorney General's
21 office it might be a high priority case, a
22 case that was getting a great deal of media
23 attention, or had large-scale ramifications
24 for the citizens of the state, things like
25 that.

1 As Governor, were there
2 particular types of issues that Mr. Dopp
3 would bring to you?

4 A Yes.

5 Q Can you give me some examples.

6 A Budget negotiations, discussions
7 about substantive issues that were at a
8 particular moment high priority from a media
9 perspective.

10 Obviously, as negotiations on any
11 issue reached a critical point, and the media
12 focused on them, that becomes something that
13 generates greater conversation.

14 Q And would Mr. Dopp discuss press
15 releases with you before they went out?

16 A Not ordinarily, no.

17 Q Were there times when he would
18 discuss press releases with you before they
19 went out?

20 A Again, the question is -- I'm
21 trying to give you a precise answer.

22 I don't think I ever read a press
23 release in draft form to participate just in
24 editing it for syntax, or perhaps tone.
25 Occasionally I would see a press release

1 before it went out, but ordinarily not.

2 MS. HIRSHMAN: The time period in
3 the Governor's Office?

4 MS. TOOHER: Yes.

5 MS. HIRSHMAN: Okay.

6 A In the Governor's Office, I don't
7 think so. I was thinking over the nine-year
8 tenure.

9 In the Attorney General's office,
10 I occasionally would, when it related to
11 settlement or initiation of a major case in
12 the Governor's office, I don't believe I ever
13 saw a press release in the sense of do you
14 want to edit this, or anything more than
15 information, this is what's going to go out.

16 Q So it was not his habit to go to
17 you with press releases --

18 A No.

19 Q -- prior to it going out while
20 you were in the Governor's office?

21 A That is correct.

22 Q Did he ever come to you in the
23 Governor's office with a press release, not
24 for editing, but to demonstrate to you, or to
25 show you, this is what is going out on a

1 particular issue?

2 A There were certainly times when
3 the issue would have been what statement
4 should we issue in response to this question,
5 or dynamic, sure.

6 Again, I don't know if it was
7 formulated as a press release, or there would
8 be a discussion about what the nature of the
9 statement should be in response to any given
10 set of circumstances.

11 Q And when Darren Dopp would come
12 to you on issues, would he come to you
13 directly, or would it be a senior staff type
14 meeting?

15 A There was no set structure. It
16 would depend on many variables, where I was,
17 where he was, was it a phone call with
18 multiple parties, was I in the Capitol?

19 And so, if nobody else was there,
20 he'd walk in and say we should talk about
21 this.

22 But there was no set process.

23 Q Would it be fair to say that
24 Darren Dopp had fairly free access to you?

25 A Sure.

1 For nine years there was free
2 access for senior officials within the
3 administration. That was the case in the
4 AG's office, it was the case as Governor.

5 Q And Mr. Dopp would have been
6 considered one of your senior officials?

7 A Yes, that is correct.

8 Q And who were your other senior
9 officials?

10 A During what time frame?

11 Q During the Governorship.

12 Unless I specify otherwise, I'm
13 talking about during the Governor ship.

14 A It would have been my counsel,
15 David Nocenti; it would have been the
16 Secretary, Rich Baum; it would have been the
17 Director of State Operations, Olivia Golden;
18 and Paul Francis.

19 It would have been any of the
20 Deputy Secretaries. It would have been my
21 Chief of Staff.

22 Anybody who worked within the
23 Executive Chamber, Drew Warshaw, to anybody
24 in the counsel's office.

25 Marty Mack to Mike Shaw.

1 There was Lloyd Constantine, who
2 was a Special Advisor.

3 There was a rather large circle
4 of individuals whom I would discuss issues
5 with.

6 Q Would it be fair to say that that
7 was your practice as Governor to keep a
8 fairly open flow of communication with senior
9 staff?

10 A Yes. Although I had a schedule
11 such that people could not just walk in
12 without going through Chief of Staff, or
13 somebody would say -- I don't know how they
14 referred to me, the Governor, is Eliot there.
15 They could check, and if I was there, they
16 could stop in.

17 Q And again, getting back to Darren
18 Dopp, what was his authority in terms of his
19 actions as Communications Director? And let
20 me explain that a little bit.

21 A Sure.

22 Q In terms of a press statement, he
23 would have authority to issue that without
24 consulting with you?

25 A I was not necessary sign off on

1 press releases.

2 As press releases would be
3 issued, he could check, how many were issued
4 every day, or press statements, in response
5 to, you know, by each of the agencies, by
6 each of the press officers, by the press
7 officers, not only in the capital, but press
8 officers in the agencies, hundreds per week.

9 And I saw probably one or two, at
10 most in the packet of materials that I would
11 get.

12 So I certainly was not involved
13 in the issuance of press releases.

14 Whether he had to get sign-off
15 from the Secretary or anybody else, I don't
16 know.

17 Q And what other activities was Mr.
18 Dopp authorized to engage in besides press
19 releases?

20 A Well, the entire dynamic of --
21 interfacing with the media.

22 There were hundreds, if not
23 thousands, of incoming requests for
24 information every week and month from the
25 media.

1 And his responsibility was to
2 both be responsive and to be proactive in
3 generating an affirmative communication
4 strategy.

5 Q And what about his authority in
6 regards to communicating with other agencies?

7 A I'm not sure I understand the
8 question.

9 Q Well, the executive branch,
10 obviously, is involved with a number of other
11 state agencies and responsible for them.

12 A Right.

13 Q Did Carl have authority to reach
14 out to those agencies in his position as
15 Communications Director?

16 A Of course.

17 The information officers at each
18 of the agencies were part of the structure
19 that he was in charge of.

20 He was responsible for the
21 communications policies and the statements
22 issued by everything from the Dormitory
23 Authority, to DCJS, to budget.

24 So that was his responsibility.

25 Q Would you consider it within

1 Mr. Dopp's authority to conduct internal
2 investigations?

3 A You would have to define the
4 term.

5 And, obviously, as a lawyer an
6 internal investigation is going to be
7 conducted by an IG, or the counsel's office.

8 And so when you phrase it that
9 way, intuitively, I say no, he doesn't do
10 internal investigations.

11 But if he is responding to
12 inquiries, and he is gathering information in
13 order to do so, that may be viewed by some
14 as an internal investigation.

15 So the answer is no, he doesn't
16 do internal investigations the way we, as
17 lawyers, think of them. But he gathers
18 information in order to respond to media
19 inquiries, yes.

20 Q During your tenure with Mr. Dopp
21 while you were Governor, did he ever discuss
22 anything in those words as an internal
23 investigation?

24 A Not that I recall, no.

25 Q Did he ever discuss conducting

1 any investigatory action, and using those
2 words, investigation?

3 A I don't recall that he used those
4 phrases, no.

5 Q Senator Bruno, who was majority
6 leader during your tenure as Governor --

7 A Correct.

8 Q -- would Mr. Dopp come to you
9 concerning press issues and Senator Bruno?

10 A Of course.

11 Q And was that a subject matter
12 that had high priority?

13 A The issue that had high priority
14 was moving our agenda through the
15 Legislature.

16 Obviously, Senator Bruno, as has
17 the majority leader, was part of that
18 process.

19 Q And was there any standing
20 recognition that issues concerning Mr. Bruno
21 were issues that Mr. Dopp should bring to
22 you?

23 A No. But inevitably, if Senator
24 Bruno made a comment on a radio show, or to
25 the media that evoked inquiry to us, and a

1 request for a response, then that was
2 something that Mr. Dopp would deal with the
3 Secretary, or the Director of Operations, or
4 the Budget Director, or the appropriate
5 individual with respect to it in order to
6 craft a response.

7 So the reality is that when the
8 Speaker Silver, majority leader Bruno or I
9 speak publicly, it evokes, and elicits a
10 response from usually the other two.

11 And that dynamic required that he
12 participate in those conversations. He did,
13 Darren Dopp.

14 Q And was it Mr. Dopp's practice,
15 or did Mr. Dopp have a practice, concerning
16 information on Senator Bruno and relaying
17 that to you?

18 A You would have to ask him.

19 Q You were not aware of any
20 particular behavior as far as information
21 concerning Senator Bruno and you?

22 A Only that when Senator Bruno
23 would make comments when I was in Albany --
24 when I was not in Albany, I couldn't spoke to
25 it -- but when I was in Albany, and he made

1 comments that evoked, or stimulated media
2 inquiry, that would become a subject of
3 conversation; how do we respond, what should
4 the response be.

5 Q And you mentioned David Nocenti.
6 He was your counsel as Governor?

7 A That is correct.

8 Q What was your working
9 relationship with Mr. Nocenti?

10 A David and I would probably speak
11 thirty or forty times a day.

12 Q And what were Mr. Nocenti's
13 duties as counsel?

14 A He was, as counsel to the
15 Governor, the lawyer responsible for
16 ensuring -- he had an enormous jurisdiction,
17 everything from bill drafting, ensuring that
18 we responded to every bill that was passed by
19 the Legislature, which was a larger task than
20 people appreciate, to ensuring that the
21 budget was crafted properly, in accordance
22 with law, and ensuring that everything we
23 did, in his perspective, abided by the
24 strictures of the laws and ethics that we
25 were living up to.

1 Q And what was your understanding
2 as to Mr. Nocenti's working relationship with
3 Darren Dopp?

4 A I have none, other than that they
5 had worked together for eight years, David
6 was my counsel throughout my eight years in
7 the Attorney General's office. He had been
8 counsel to Claire Shulman; he had been had an
9 assistant counsel to Governor Cuomo. And
10 then I think first assistant counsel to
11 Governor Cuomo. Had been prosecutor in the
12 Eastern District.

13 So he was a stupendously
14 experienced lawyer, who knows when and what
15 data or information he needs to reach a
16 conclusion, and he obviously, since he was at
17 the very senior most levels, both when I was
18 Attorney General and when I was Governor,
19 knew how to speak to individuals, including
20 Darren, to get the information he needed, or
21 to participate in decisions to make sure
22 things were done properly.

23 Q Were you aware of any times of
24 Darren speaking with David Nocenti concerning
25 press issues?

1 A Was I aware of any?

2 Q Yes.

3 A I could not give you a specific
4 instance where I can say on this date, on
5 that, issue they spoke, but I would, at the
6 risk of evoking the ire of my counsel here,
7 speculate that they spoke thousands of times
8 about press issues, because David and Darren
9 were at the very senior levels of
10 decision-making, both in the eight years I
11 was Attorney General and my tenure as
12 Governor.

13 Q And what were the types of issues
14 that David Nocenti would bring to you
15 directly?

16 A Everything from judicial
17 appointments, to conversations about whether
18 I should sign or veto a particular bill.
19 Budget conversations, judicial policies,
20 legal arguments.

21 It was almost impossible to cabin
22 the range of conversations that we had. It
23 was expansive as one might imagine.

24 Q And what about Rich Baum? Rich
25 Baum was your Secretary?

1 A That is correct.

2 Q And what were his duties?

3 A The secretary to the Governor is
4 by law essentially the -- other than the
5 Lieutenant Governor, I suppose -- the primary
6 decision maker, primary advisor, to the
7 Governor with respect to the structuring of
8 state policies.

9 So our conversations ranged from
10 every legislative budget policy, economic
11 development issue, to the politics and how we
12 would succeed in effectuating the agenda that
13 I had been elected to effectuate.

14 Q And Mr. Baum reported directly to
15 you?

16 A That is correct.

17 Q And are you aware of what Mr.
18 Baum's working relationship was with Darren
19 Dopp?

20 A They worked together. I could
21 not tell you if they had a regular 7:00 a.m.
22 meeting, or how and precisely they
23 communicated.

24 But I can tell you that they
25 worked closely together, sure.

1 Q And Mr. Baum was also obviously
2 one of your top senior staff?

3 A Yes, that's correct.

4 Q Marlene Turner, who is Mr.
5 Turner?

6 A Her title was Chief of Staff when
7 I was Governor, and prior to that, when I was
8 Attorney General, she had been a scheduler,
9 but really she ran the executive office in
10 the Attorney General's office.

11 Q And what were her duties in that
12 capacity?

13 A To --

14 Q In the Governor's office.

15 A To essentially, from my
16 perspective, ensure that the everyday
17 schedule was maintained, the flow of paper to
18 me was such that I would receive the
19 necessary briefings, the information the
20 night before the next day's events, so that I
21 was prepared, and that the paper flow was
22 handled in accordance with my needs.

23 Q And do you know what Ms. Turner's
24 working relationship was with Darren Dopp, if
25 any?

1 A Again, as my prior answers, we
2 had all worked together for years when I was
3 Attorney General, and so, it was a close
4 relationship, where issues were discussed and
5 matters were raised.

6 Q And William Howard, what capacity
7 was Mr. Howard serving in your
8 administration?

9 A Again, during the Attorney
10 General's office, no.

11 Q No, in the Governor's office.

12 A I'm clarifying, because I've
13 spoken to both periods.

14 He had been -- and I do not know
15 his title, in fact, I'm not sure of what his
16 precise titles were in any period of time.

17 He had been a senior official
18 within the Pataki administration.

19 And when I was elected Governor
20 and approached the inaugural, the concern I
21 had was how would we ensure that we were
22 prepared in the event of a blizzard, a
23 natural disaster, a prison uprising,
24 whatever, a sort of an event that would
25 require immediate response from the National

1 Guard, or any other element of the state
2 response, from the State Police on down.

3 And as we interacted with the
4 Pataki administration, Bill Howard's role in
5 that structure, and decision-making
6 structure, became more and more apparent.

7 So we decided to keep him has a
8 holdover from the Pataki administration,
9 because he seemed to be the individual who
10 knew what levers to push, what buttons to
11 push, and levels the pull, who to call in the
12 event of a disaster.

13 And he remained on the second
14 floor.

15 His precise title, I could not
16 give you.

17 Q And do you recall who had input
18 in that decision to keep Mr. Howard?

19 A I could not give you a complete
20 list. I know that I was part of that
21 decision-making process.

22 And I know Rich Baum was part of
23 it.

24 Beyond that, I could not tell
25 you.

1 Others had, in a similar way,
2 viewed him as being a useful participant in
3 that decision-making process.

4 Q And did Mr. Howard have a
5 relationship with the State Police during his
6 tenure in your administration?

7 A Yes. Part of his responsibility
8 was to be one of the individuals who would
9 deal with the State Police on a multitude of
10 issues, but I could not tell you which, and I
11 could not tell you precisely what.

12 Q And did Mr. Howard report to you
13 during your administration?

14 A Directly?

15 Q Yes.

16 A No.

17 Q Who did he report to you, do you
18 know?

19 A He reported to the Deputy
20 Secretary, who I guess would be Senator
21 Balboni.

22 And then from the Deputy
23 Secretary would be to, really, the Director
24 of State Operations, and the Secretary.

25 So really, there were several

1 layers between Mr. Howard and me in terms of
2 a reporting structure.

3 Q And did you have conversations
4 with Mr. Howard during your administration?

5 A Sure.

6 Q Concerning what types of issues?

7 A The contact with Bill was limited
8 to two areas, as I best recall.

9 The first would be disasters,
10 usually State Police-related shootings.
11 There were several losses in State Police and
12 hostage situations and/or floods that
13 resulted in damage.

14 And Bill would be the individual
15 who would keep me updated as those events
16 unfolded during those periods of time.

17 And he would be the conduit of
18 information to ESP or SIMO, the Emergency
19 Management Office.

20 So that was the preponderance of
21 my interaction with Bill. And It was limited
22 to those discrete events.

23 Second, which is ancillary, but
24 he is something of a historian, and he helped
25 put together certain displays in the Red Room

1 of historical memorabilia.

2 And I remember we spoke about
3 that, and I think he was there when we did a
4 press availability.

5 I think it was a draft of the
6 Emancipation Proclamation, and somebody saw
7 it.

8 That was the set of
9 circumstances.

10 Q Did you ever have any
11 communications with Mr. Howard concerning the
12 State Police and the use of the airplane?

13 A I do not believe so.

14 Q Did you ever have any
15 conversations with Mr. Howard concerning the
16 State Police and Senator Bruno's use of the
17 helicopter?

18 A I do not believe so.

19 Q Did you ever have any
20 conversations with Mr. Howard concerning the
21 State Police provision of ground transport to
22 Senator Bruno?

23 A I do not believe so.

24 MR. TEITELBAUM: Mr. Spitzer, I
25 just want to ask you whether Mr. Dopp used

1 the term "investigation."

2 Did he ever use the term
3 "monitoring" to you?

4 THE WITNESS: I do not recall his
5 using that term, no.

6 MR. TEITELBAUM: And was there
7 anybody in the Executive Chamber who viewed
8 the press releases prepared by the
9 communications people?

10 THE WITNESS: I'm sure there was.

11 MR. TEITELBAUM: Do you know who?

12 THE WITNESS: I do not know what
13 the precise review process was in the
14 Governor's Office.

15 I know that -- I don't want to
16 speculate, but I am quite confident that with
17 respect to certain types of issues, there
18 would be involvement from the senior staff,
19 meaning Rich Baum, or others who were
20 involved in a particular issue.

21 On mundane matters, I imagine
22 there was not.

23 But beyond that, I could not tell
24 you.

25 MR. TEITELBAUM: Do you know

1 whether Mr. Nocenti drafted press releases?

2 THE WITNESS: I would have no
3 idea.

4 I would be surprised, but I do
5 not know.

6 MR. TEITELBAUM: Why would you be
7 surprised?

8 THE WITNESS: Well, because he
9 had enough paper to read without reading
10 press releases, and I just don't think that
11 he David would have been called in to
12 issuance of a press release unless it related
13 to the appointment of a judge, or a
14 particular subject matter that was within his
15 domain.

16 MR. TEITELBAUM: Did you ever
17 have communications with Mr. Nocenti
18 concerning a draft press release?

19 THE WITNESS: Did I ever?

20 MR. TEITELBAUM: As best you can
21 recall.

22 THE WITNESS: I don't recall ever
23 having a conversation with David about a
24 press release, but then again, our
25 conversations were expansive and covered so

1 many topics.

2 For instance, again, I'm not time
3 limited on this. When I was Attorney General
4 --

5 MR. TEITELBAUM: During the
6 Governorship.

7 THE WITNESS: Again since David
8 was involved in so many issues, if there was
9 a press release relating to the budget, and
10 it had something to do with judicial
11 salaries, perhaps he would have participated.

12 I'm speculating there.

13 But, again, it's subject matter
14 dependent.

15 MR. TEITELBAUM: I believe you
16 gave testimony that Mr. Howard was one of the
17 people who had responsibilities with respect
18 to the State Police.

19 THE WITNESS: That is correct.

20 MR. TEITELBAUM: Was there anybody
21 else on the second floor who had that
22 responsibility?

23 THE WITNESS: Senator Balboni.

24 MR. TEITELBAUM: Was he on the
25 second floor?

1 THE WITNESS: Well, by "second
2 floor," I perhaps have a different sense of
3 -- what I mean by the second floor is an
4 inner decision-making group of individuals.

5 Where the offices physically were
6 didn't matter a lot to me, because my office
7 was hardly ever on the second floor.

8 Senator Balboni, as the Deputy
9 secretary with responsibility for law
10 enforcement issues, was somebody who had
11 responsibility over the State Police, as did
12 Denise O'Donnell, Commissioner of DCS.

13 So there were others who had a
14 role within that decision-making, yes.

15 MR. TEITELBAUM: Besides Balboni
16 and O'Donnell, and Howard, anybody else?

17 THE WITNESS: Anybody?

18 The Secretary. If you look at
19 the organizational chart, he clearly has the
20 supervisory responsibility.

21 But in terms of direct
22 interaction with the State Police, I think
23 those are the individuals.

24 BY MS. TOOHER:

25 Q Was there a FOIL policy that you

1 established in the Governor's office?

2 A Yes, there was.

3 Q And can you describe what that
4 policy was.

5 A No.

6 Q Did you have discussions with
7 your staff concerning FOIL, your senior
8 staff?

9 A No.

10 I mean, the discussions were -- I
11 don't want to be flip. I never read the FOIL
12 policy, I never participated in drafting it,
13 editing it.

14 We had one in the AG's office. I
15 never looked at it, never made a decision
16 about FOIL.

17 It was answer FOIL requests, be
18 transparent.

19 I may have signed some executive
20 orders relating to it.

21 But I did read, obviously, what
22 counsel's office would have drafted.

23 The effort was to be transparent,
24 but I did not ever look at a FOIL document,
25 or participate in decisions relating to it.

1 Q What was your understanding as to
2 what the FOIL policy was in the Executive
3 Chamber?

4 A Give the media public
5 information.

6 Q And when you say "give the media
7 public information," how so? How did that
8 happen?

9 A They call and ask questions, you
10 answer it.

11 And understand, FOIL is a
12 threshold. It does not define the outer
13 limit of information's flow to the media.

14 I would say that only in a de
15 minimus percentage of media inquiries is
16 there a FOIL involved.

17 The media asks for information,
18 and is given information if it's public, and
19 that was the policy.

20 FOIL is provided or served only
21 if there is hesitancy, or if there is some
22 other reason, I suppose.

23 But there is an enormous flow of
24 information between and among the public
25 information officers and the media

1 independent of FOIL.

2 Q And why would there be a
3 hesitancy in responding to a media request?

4 A Well, because you might say it's
5 going to take time, it's going to be
6 burdensome.

7 It's a chore to gather it. Do
8 you need it. Here is a FOIL, get it for us.
9 Stuff like that.

10 Q So a FOIL request, what is your
11 understanding of what a FOIL request is
12 particularly? Is that a written request, or
13 is that an oral request?

14 MR. BROCHIN: You're asking for a
15 legal definition?

16 MS. TOOHER: No, I'm asking for
17 his understanding.

18 A I'm not sure if, in fact, there
19 is a distinction between a request that can
20 be on a piece of tissue paper that says
21 pursuant to the Freedom of Information Law.
22 I'm asking for A, B and C. I believe the
23 oral.

24 I'm not sure.

25 If somebody says FOIL, it becomes

1 a FOIL request. Otherwise, it's a media
2 request.

3 The distinction between the two,
4 in my mind, is de minimus to the point of
5 nonexistence, because either way we provide
6 public information.

7 MR. BROCHIN: Did you routinely
8 see FOIL requests?

9 THE WITNESS: I don't think I saw
10 more than -- I'm not aware that I ever saw a
11 FOIL request in my years as AG or Governor.

12 Maybe one or two FOIL requests
13 specifically related to me and the charities,
14 some particular issue, I may have seen it, my
15 family's charity, I may have seen it.

16 Q Did you ever have discussions
17 with your staff concerning FOIL?

18 A Again, the word "ever" --

19 Q During --

20 A I understand. Even time limiting
21 it to my gubernatorial tenure, the issue of
22 FOIL compliance may have come up, and
23 certainly on January 1st of 2007 I signed
24 certain executive orders relating to
25 information flow. And I don't know if those

1 related to FOIL in particular.

2 But the notion of transparency.

3 So there were general
4 conversations that we were going to be
5 transparent, and try to provide as much
6 information as possible.

7 Beyond that, I do not recall.

8 Q You relayed the transparency
9 issue to your senior staff?

10 A That is correct.

11 Q And did you relay that to Darren
12 Dopp?

13 A Necessarily, so yes.

14 Q Because he was --

15 A Well, he was really the fulcrum
16 of that conversation. As the Communications
17 Director, that is really where the media
18 interfaces with the executive.

19 And it came down to things as
20 fundamental as whether the second floor would
21 be locked, and whether there would be access
22 to the second floor for reporters, which had
23 been, you may recall, a point of some
24 contention during my predecessor's tenure.

25 And we made a significant effort

1 to open up the second floor, so that
2 reporters could actually walk onto the second
3 floor, a portion of the second floor that's
4 considered to be the Executive Chamber, and
5 talk to people.

6 And Darren was the one who
7 coordinated that.

8 Q Are you aware whether or not the
9 Executive Chamber had a FOIL officer?

10 A I am sure we did.

11 Q Do you know who that was?

12 A Somebody within counsel's office.

13 Q But you don't know who the
14 individual was?

15 A I don't know if it was one person
16 throughout, or changed.

17 It might have been a sort of
18 burdensome responsibility or duty that you
19 rotate around. I don't know.

20 MR. TEITELBAUM: Mr. Spitzer, was
21 it your understanding that there was a
22 written FOIL policy.

23 THE WITNESS: I imagine there
24 was.

25 MR. TEITELBAUM: Is that your

1 best information that you have?

2 THE WITNESS: Yes.

3 MR. TEITELBAUM: Was it written?

4 THE WITNESS: I've never read it,
5 but I'm sure that it was. I presume there
6 was.

7 MR. TEITELBAUM: Did somebody
8 tell you that?

9 THE WITNESS: I think it's the
10 sort of thing you just assume, and know
11 intuitively.

12 There has to be some process by
13 which FOIL's are responded to, deadlines,
14 time frames. Like everything in government,
15 there's got to be a rule somewhere.

16 MR. TEITELBAUM: What I mean by a
17 written FOIL policy, I mean a FOIL policy in
18 written form that was developed by your
19 administration.

20 THE WITNESS: I do not know if it
21 was developed by us, amended by us.

22 That I do not know.

23 When I was Attorney General,
24 there was a FOIL policy that dealt obviously
25 with how you deal with requests for

1 litigation documents and other documents
2 which you need to analyze from various
3 perspectives.

4 There must have been, I presume
5 there was such a policy with respect to the
6 executive.

7 Q Did Darren Dopp ever come to you
8 concerning a FOIL request for Senator Bruno
9 information?

10 A He came to me and said that there
11 had been information requested which would be
12 the subject of a FOIL, yes.

13 Q When was that?

14 A One such example, and it may be
15 the only one I can recall, it was related to
16 the use of the airplane, the helicopter.

17 Q And do you know when that was?

18 A The initial contact on that issue
19 I believe was in early May, but it was not a
20 request limited to Senator Bruno, it was for
21 anybody's use of the State airplane.

22 Q And what was your understanding
23 as to where that request was coming from?

24 A I do not recall. I don't know.

25 Q What did Mr. Dopp say to you in

1 that regard?

2 A They are asking for information
3 about use of the plane. And frankly, it was
4 not Senator Bruno's use of the plane, it was
5 my use of the plane, which had been a
6 constant source of media input.

7 Q And when you say "they're
8 asking," who's "they"?

9 A The media.

10 Q And were you aware of any
11 particular members of the media at that time?

12 A No.

13 There had been articles in
14 virtually every media outlet, from the New
15 York Times to the New York Post, to the Times
16 Union, to TV stations, about use of the
17 airplane going back years and years and
18 years.

19 This was a constant source of
20 inquiry.

21 Q But in early May, what were the
22 inquiries directed at?

23 A I knew only that there were
24 inquiries about use of the airplane.

25 MR. BROCHIN: Did you say it was

1 early May?

2 THE WITNESS: I think it was
3 early May.

4 And let me preface this by saying
5 that I'm going to give you my absolute best
6 recollection about when events occurred. It
7 sometimes gets difficult to parse
8 recollection as I sit here today versus what
9 I have read in multiple reports and multiple
10 investigations of this issue, which have
11 brought to light facts that I now believe I
12 recall, but do not know when I actually first
13 recalled them.

14 Q Looking to the early May time
15 frame, and Darren relayed to you that there
16 were media requests concerning the plane, had
17 been there discussions concerning the plane
18 prior to that time in the chamber?

19 A Oh, sure.

20 Q And what type of discussions were
21 they?

22 A Understand that going back to
23 1994, the issue of Air Cuomo, which George
24 Pataki turned into quite a significant issue
25 during the gubernatorial campaign, framing

1 this as abuse of public assets.

2 Since that date, there had been
3 an awareness that this would and could be a
4 media issue.

5 During my campaign it was an
6 issue, it didn't relate to the public plane,
7 it was funding of airplanes.

8 When I was elected Governor, we
9 changed the certification that was to be
10 appended to request for the airplane, in
11 order to do our best to ensure that there
12 would be a public purpose attached to the use
13 of the plane on a given day.

14 Q And when you say "we changed the
15 certification," who is "we"?

16 A I use "we" because I'm not quite
17 sure who was involved in that.

18 I know I at some point had raised
19 it as an issue where I wanted us to be
20 careful.

21 Q Who did you raise it with?

22 A I don't remember if it was with
23 David Nocenti, Marlene Turner, Rich Baum,
24 Darren.

25 I do not know with whom I raised

1 it, but I know I made the point, let's make
2 sure we are careful, this is something that
3 is often a media focus.

4 And we did change the
5 certification.

6 I was not involved in crafting
7 the wording, or involved beyond that.

8 Q What was your understanding as to
9 what the change in the certification was?

10 A There was, I believe, I believe
11 that there was an amendment that required
12 that there be a signed statement that there
13 be a government purpose to the trip.

14 I do not know what the form had
15 been beforehand, but I believe that was
16 added.

17 Q And what was the intent in making
18 that change?

19 A Just to make sure that the plane,
20 or the helicopters were used for a public
21 purpose, rather than for a purely political
22 purpose, or personal.

23 There are many other purposes for
24 which one can imagine.

25 Q And did you have an understanding

1 at that time as to what was appropriate use
2 of the plane?

3 A According to who?

4 Q According to you.

5 A What I thought was appropriate,
6 or what the law thought was appropriate?

7 Q What the law thought was
8 appropriate?

9 A That's why I asked.
10 The law, as I understood it, was
11 vague.

12 And that vagueness was what
13 worried me, and hence I sought to add some
14 element of clarity to it.

15 Q Vague how so?

16 A There was uncertainty about
17 either the need or the proportion of public
18 purpose that needed to attach to any given
19 set of meetings that were being made possible
20 by virtue of using the plane, and even to the
21 definition of what public purpose was.

22 This is an area that the courts
23 had grappled with in the Orenstein case,
24 where I was one of the Prosecutors, and
25 clearly, there was some ambiguity that

1 continued to be reflected in the guidance
2 from the Ethics Commission; or lack of
3 guidance.

4 So we were trying to say, what do
5 we do to make sure we act properly here.
6 Because the Executive Chamber needs, for
7 whatever reason to sign off on others' use of
8 the plane, as well, so we wanted to be
9 careful.

10 Q And when the certification was
11 changed, what was your understanding as to
12 the appropriate use of the plane or
13 helicopter at that juncture, following the
14 change?

15 A Again, it was obligatory -- what
16 was added was a statement, I believe, and the
17 document I'm sure is before you somewhere --
18 a statement that there be a government
19 purpose for the trip.

20 Q Could there also be another
21 purpose for the trip?

22 A I believe we would have to look
23 at the language, but I don't think it said
24 exclusively government purpose. I believe it
25 said a government purpose.

1 And again, that is the area of
2 latitude that I believed should have been
3 addressed, and needed to be addressed.

4 Q And in terms of the
5 certification, were you a part of that?

6 A No.

7 Q Was that --

8 A The drafting of it?

9 Q Yes.

10 A No.

11 Q Was that ever discussed with you
12 in terms of the language of the
13 certification?

14 A No. I was a bit more concerned
15 with the budget, 3,000 appointments, and \$125
16 billion, and how we would spend it.

17 Q And was it ever relayed to you
18 that there had been conversations with the
19 Senate concerning the certification
20 requirement?

21 A I heard at some point that the
22 Senate was worried about a separation of
23 powers issue, and did not want to provide
24 some information, but I know beyond that.

25 Q And who did you hear that from?

1 A I do not recall.

2 Q And were there ever discussions
3 about requiring more information in
4 requesting use of the plane than just the
5 certification?

6 A I do not know.

7 Q Did anyone ever relay to you the
8 concept of using itineraries or schedules as
9 a requirement for using the plane?

10 A Maybe that is the information
11 that the Senate was hesitant to provide, but
12 I do not know.

13 MR. TEITELBAUM: Mr. Spitzer, did
14 you participate in discussions where the
15 standard was established for the proper use
16 of the helicopter aircraft?

17 THE WITNESS: No.

18 MR. TEITELBAUM: Do you know if
19 there were such discussions that took place?

20 THE WITNESS: I have no idea.

21 MR. TEITELBAUM: Do you know --

22 THE WITNESS: Although implicit
23 in the crafting of the certification, one
24 might argue a certification is a standard.
25 So if you're crafting a certification, in

1 essence, you're creating a standard.

2 MR. TEITELBAUM: And what is your
3 understanding of how the certification
4 clarified the ambiguity that you just
5 testified to?

6 THE WITNESS: I could not tell
7 you without examining the certification and
8 contrasting it to the prior form, which I
9 have not done.

10 MR. TEITELBAUM: But your
11 understanding is that certification did lend
12 clarity to the --

13 THE WITNESS: It's my
14 understanding that it was an effort to lend
15 clarity. Whether it did or didn't, I'll let
16 others determine.

17 MR. BROCHIN: He didn't testify
18 before that it lacked clarity.

19 MR. TEITELBAUM: Was it your
20 understanding that it did lend clarity?

21 THE WITNESS: It was my
22 understanding that it was designed to lend
23 clarity.

24 And we were attempting to address
25 an issue that was, dare I say, was not even

1 tertiary, it was probably about eighty-fifth
2 on the priority out of eighty-four, in terms
3 of things that I was worried about. But it
4 was something to get done.

5 Q Did you discuss the certification
6 issue with Richard Rifkin in your office?

7 A I don't recall doing so.

8 Q Were you aware that Mr. Rifkin
9 had drafted, or had given an oral statement,
10 of the policy concerning the aircraft
11 previously?

12 A Much after the fact, I became
13 aware, that to the extent there was a policy,
14 it was based upon an oral statement that
15 Richard had given when he was, I guess,
16 Executive Director of the Ethics Commission.

17 I don't know if that was the
18 formal policy, if it was the informal policy.
19 I know that became one element of the
20 conversation.

21 Q But you didn't have conversations
22 with Mr. Rifkin early in your administration
23 concerning the use of the aircraft?

24 A Did I?

25 Q Yes.

1 A No. I would get on the airplane
2 when they said we're using the airplane. I
3 would get off when we got there.

4 I did not make any determinations
5 whether I used the airplane.

6 Q Did you ever have discussions
7 with anyone in the chamber concerning Senator
8 Bruno's use of the aircraft?

9 A Yes.

10 Q And who would you have those
11 discussions with?

12 A It began --

13 MS. HIRSHMAN: You mean who
14 would, or who did he have those discussions
15 with?

16 Q Who did?

17 A The first conversation, as it
18 related to Senator Bruno's use of the plane,
19 resulted in from my conversation with Senator
20 Bruno during the campaign.

21 And I recounted that conversation
22 to individuals who then, were not then, but
23 would become part of the chamber staff.

24 But it's relevant, I believe, to
25 your inquiry.

1 And this was a conversation which
2 I'm sure you've read of, which he asked me
3 not to deny him access to the plane.

4 And I said I would not deny him
5 access to the plane. It was not my toy, it
6 was not my property, it was public property,
7 and that he would have access to it when it
8 was appropriately being used.

9 I conveyed that conversation to
10 several individuals.

11 I could not tell you whether it
12 was Rich, Marlene, at that time, because
13 those were the individuals with whom I was
14 dealing during the campaign.

15 Darren was not. He ran my
16 campaign staff, so I dealt with him much less
17 during that period of time.

18 Q And after you came into office,
19 was there conversations with your staff
20 concerning Senator Bruno's use of the plane?

21 A There were a few, very few, and
22 I'm sure you have seen, as I have since this
23 whole inquiry began, the various e-mails back
24 and forth in which Marlene on occasion asked
25 me whether we should say yes or no to a

1 request for the plane by Senator Bruno.

2 And so an event like that,
3 obviously, it was my attention. But there
4 were very, very few of those.

5 In fact, I can't remember any
6 other than that indicated by the e-mail.

7 Q And that event where Marlene
8 Turner spoke to Catesby Perrin, did Catesby
9 come to you and relay Marlene's request?

10 A I imagine he did.

11 I'm presuming that, but if
12 Marlene asked him to ask me something, I'm
13 sure he did.

14 And then there may have been one
15 other time, actually, when Marlene yelled
16 out, "Senator Bruno is asking for the plane."
17 And I would say yes. We do not deny access
18 to the plane, as long as they say it's for an
19 appropriate purpose.

20 That was always my response.

21 Q And did you ever give direction
22 to Marlene, or anyone on your staff, to keep
23 you advised as to Senator Bruno's use of the
24 plane?

25 A No, I did not.

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1 I have no idea how often he used
2 the plane, or when and where, other than
3 these interactions that we have discussed.

4 Q Do you know why you received the
5 inquiry on that occasion?

6 A As the events have been
7 reconstructed, and I was not focusing on this
8 at the time, there were moments when Senator
9 Bruno made comments, or made public comments
10 that were, by any standard, violative of the
11 civil discourse that we were trying to
12 maintain at a public level.

13 And I think somebody said, "You
14 want to act the way your predecessor did and
15 take the chopper, or the fixed wing plane,"
16 and I said no.

17 I told him back last summer, it
18 was not during the summer, we found out it
19 was in November, that I told him I wouldn't
20 do that, I'm not going to.

21 Q Who relayed that to you, "Do you
22 want to take the plane away"?

23 A Again, I don't think those were
24 the precise words. It would have been
25 Marlene, just by saying, "He wants the plane.

1 What do you want to say?"

2 I mean, technically, as the
3 Governor, I could have said no, but I never
4 id.

5 Q And in terms of saying yes, what
6 was your understanding as to the basis for
7 approving or denying the use of the plane?

8 A Merely that they would have to
9 fill out the form that had been created.

10 So I do not know anything other
11 than that they had to fill out a form. I
12 don't know what they were doing with those
13 things.

14 Q So in making a determination of,
15 yes, you can use the plane, or, no, he can't
16 use the plane, did you consider any
17 information?

18 A No.

19 I was not saying I have examined
20 the information, therefore, he can use the
21 plane. I was saying I am not overriding that
22 process by peremptorily determining, as
23 Governor of the State of New York that he
24 will not use the plane, and I'm grounding
25 him, like apparent grounding a teenager.

1 I'm saying, "Do whatever the
2 process requires." And if he fills out the
3 authorization, he gets the plane. If they
4 don't fill it out, I guess they don't get it.

5 But I'm not doing anything other
6 than the ordinary process requires.

7 Parents aren't successful with
8 teenagers, either.

9 Q I have two.

10 MR. TEITELBAUM: Off the record.

11 Q Concerning the media inquiries on
12 the use of the plane, and you testified
13 earlier, in early May, Darren notified you
14 that there were media inquiries.

15 Those inquiries also concerned
16 your use of the plane; is that correct?

17 A That is correct.

18 Q And what was the nature of those
19 inquiries?

20 A I've told you everything I know
21 about them. The media is inquiring about
22 your use of a plane. Fine, big deal.

23 Q What was your understanding as to
24 the question concerning your use of the
25 plane?

1 A Well, implicit in the question
2 always is -- and I'm not sure if it was
3 articulated this way -- the question is are
4 you using the plane to go to a fund-raising
5 event, are you using the plane to go visit
6 your parents in Florida, are you using the
7 plane to do government work in Rochester or
8 Washington.

9 It was essentially the effort to
10 parse that public, nonpublic, divide we
11 referred to earlier.

12 Q And was there a particular trip
13 that the media was interested in at that
14 time?

15 A I do not know. There may have
16 been, but I don't know.

17 Q Did Darren Dopp ever mention to
18 you that they were inquiring about a
19 California trip during that time frame?

20 A I do not know if that was raised
21 ever, or certainly at that point in time
22 during my -- during the relevant time period.
23 In the course of this investigation, it has
24 somehow emerged that maybe that was the
25 inquiry.

1 But I do not believe I was aware
2 of that fact at that time.

3 Q Did you give Darren any
4 instruction in terms of responding to the
5 media inquiries at that time in early May?

6 A No. I mean, my recollection is I
7 probably shrugged and said okay, next.

8 Big deal.

9 Q And did Darren have further
10 conversations with you after early May
11 concerning media inquiries on the use of the
12 plane?

13 A The next conversation that I
14 recall -- and this is a conversation that, as
15 you can see from examining the multitude of
16 documents in this case -- we did not recall,
17 I did not recall until more recently, was the
18 mid-May conversation that somehow related to
19 the draft press release, and that sequence of
20 events, the May 17th.

21 Q And what was that conversation?

22 A It was a conversation in which
23 the question was whether or not information
24 should be released, provided to the media,
25 about use of the plane by Senator Bruno.

1 Maybe others, but I recall Senator Bruno.

2 And my perspective was that this
3 was a nonissue, the law was remarkably
4 porous, that I referred to the Orenstein case
5 as the -- not by case name, I referred to it
6 as the Orenstein -- maybe I said the
7 Orenstein case established a very lax
8 standard.

9 Who cares, this is a nonevent,
10 and we're trying to do a lot of business with
11 these guys. What's the point in getting
12 involved in any of this?

13 Q And who participated in this
14 conversation?

15 A I believe it was Rich Baum. I
16 believe it was Darren Dopp. I believe David
17 Nocenti may have been there.

18 But again, this was a very brief
19 conversation.

20 Q And where did this conversation
21 take place?

22 A I do not recall if it was in my
23 office, or the adjoining conference room, but
24 it was, again, brief, because I was
25 dismissive of the issue, and indicated that

1 to those involved.

2 Q I'm going to show you what has
3 previously been marked as Commission's
4 Exhibit 30.

5 (Witness reviewing document.)

6 Q And I ask you if you can identify
7 this document.

8 A I can identify it as the draft
9 press release that has become a subject of
10 inquiry in this investigation, but I do not
11 make that inquiry, because I recall seeing it
12 at the time.

13 Q Were you shown this document at
14 the time of your conversation with Darren
15 Dopp, Mr. Baum and Mr. Nocenti?

16 A I do not recall seeing this
17 document until this investigation was under
18 way.

19 Q And by "this investigation," you
20 mean the Commission on Public Integrity's
21 investigation?

22 A Well, I'm not sure when you
23 began, as opposed to the DA, the IG, and the
24 others who have been parsing this.

25 I did not -- let me phrase it

1 this way. I do not recall seeing this in the
2 time frame of May, June, July of 2007.

3 Q So you have no recollection of
4 Darren Dopp bringing this press release to
5 you in or around the May 17th time frame?

6 A That is correct.

7 And clearly, this was a topic of
8 conversation, but I do not recall, have any
9 recollection of seeing this document.

10 Q And during the conversation about
11 this press release, was a decision made
12 concerning the press release itself?

13 A I'm not sure the conversation was
14 about the press release.

15 I'll try not to quibble, but the
16 conversation I described was about an issue
17 separate and apart from the press release.

18 Now, the press release may have
19 been either the trigger, or may have been a
20 predicate to the conversation.

21 But the conversation was about
22 the release of information, and I was
23 dismissive about it, and whether that was
24 taken as final judgment, I guess, as the
25 Governor, I said, "This is a waste of time.

1 This is an issue who cares."

2 I guess others might have viewed
3 that as a determination, because my
4 understanding is this press release was not
5 issued.

6 Q What was your understanding as to
7 the information that was going to be
8 released?

9 A The information relating to
10 Senator Bruno's activities on days when he
11 used the plane.

12 Q Were you shown any documents
13 during this conversation?

14 A I do not recall seeing any
15 documents.

16 Others may have looked at
17 documents, but my involvement in the
18 conversation was brief, as I said.

19 MR. TEITELBAUM: Did you see
20 anybody looking at a press release?

21 THE WITNESS: I don't recall.

22 Q Did Mr. Dopp express any concern
23 at this time during this meeting about the
24 use of the plane by Mr. Bruno?

25 A Yes. The predicate to the

1 conversation was concern that the plane was
2 being used for purely political purposes, as
3 opposed to governmental. This is a divide
4 that is perhaps hard to articulate.

5 My brief observation was that how
6 are you ever going to know which is which,
7 and what is what, and who cares.

8 Q Did Mr. Dopp express any concerns
9 going forward from that date about use of the
10 plane at this time?

11 A I'm not sure I understand.

12 Concerns about Senator Bruno's
13 use of the plane.

14 Q Correct.

15 A I don't remember.

16 Q Did you give him any direction
17 following this meeting concerning Senator
18 Bruno's use of the plane?

19 A In the course of this
20 conversation?

21 Q Yes.

22 A Not that I recall.

23 The conversation did not relate
24 to use of the plane, which was not a
25 determination that Darren would be involved

1 in making.

2 It was a question of release of
3 information, and that is the issue I spoke
4 to.

5 Q Did Darren relate to you that
6 there were, again, media inquiries concerning
7 use of the plane?

8 A Yes, that was the predicate.

9 This was shortly after the
10 initial conversation about inquiries, and so,
11 it was part of that.

12 Q What did he say to you about the
13 plane.

14 MR. BROCHIN: The same
15 conversation?

16 Q In sum and substance.

17 A There were media inquiries.

18 This is an issue that the media
19 was always interested in.

20 That was part of the backdrop to
21 the conversation.

22 Q Did Darren indicate he would be
23 doing anything in response to the media
24 inquiry?

25 A I do not recall.

1 Q Did you give him any instruction
2 concerning what he should be doing?

3 A Not that I recall, no. Other
4 than my indicating that I thought it was
5 sillyish.

6 Q Did you give him any direction to
7 continue to keep an eye on this issue?

8 A Not that I recall.

9 Q Did you give him any direction
10 concerning obtaining any records in response
11 to media inquiry at that time?

12 A I do not believe so.

13 Q Was there any discussion at the
14 May 17th time frame of Darren doing anything
15 further on Senator Bruno's use of the
16 airplane?

17 A I do not recall.

18 And I'm glad you added the words
19 "time frame," because I do not know if the
20 conversation was on the 16th, 17th, 18th,
21 19th.

22 There is no precision in terms of
23 placing the conversation.

24 MR. TEITELBAUM: Within this time
25 frame, was there any discussion with Mr.

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1 Dopp, and the others who you mentioned, who
2 were part of this discussion, concerning
3 monitoring Senator Bruno's use of the
4 aircraft?

5 THE WITNESS: Not that I recall,
6 no.

7 MR. TEITELBAUM: Either by
8 yourself or being mentioned by the other
9 people involved, did anyone else mention it?

10 THE WITNESS: By myself, you mean
11 whether I would monitor it?

12 MR. TEITELBAUM: No, of course
13 not.

14 But whether you yourself --

15 THE WITNESS: Mentioned the word.

16 MR. TEITELBAUM: -- mentioned the
17 word "monitor."

18 THE WITNESS: I do not recall
19 using the word "monitor."

20 MR. TEITELBAUM: Did you hear
21 anybody else use the word "monitoring" during
22 this conversation?

23 THE WITNESS: I have no
24 recollection of that, but again, as you can
25 see, this was a brief conversation among five

1 hundred that day on other issues.

2 So I do not know.

3 MR. TEITELBAUM: Would you agree
4 with me that a direction coming from yourself
5 or from somebody else to Mr. Dopp to monitor
6 Senator Bruno would be an important decision?

7 THE WITNESS: No.

8 I don't mean to be disagreeable,
9 but first, I do not remember using that word,
10 I do not believe I used that word.

11 But an important decision to keep
12 an eye on things is almost sort of a
13 perfunctory response to, you know, Senators
14 talking about property taxes.

15 Keep an eye, see what he says.

16 The word "monitor" is not a word
17 I have any recollection of using.

18 MR. TEITELBAUM: When we talk
19 about the subject, we're talking about
20 keeping an eye on Senator Bruno's use of the
21 State aircraft.

22 In words or substance, did you or
23 anybody else in your earshot, say to Darren
24 Dopp, in words or substance, and on a going
25 forward basis, from that period of time that

1 we are talking about, mid-May, that he should
2 be keeping an eye on Senator Bruno's use of
3 the State aircraft?

4 THE WITNESS: I do not recall any
5 such directive, but again, there was an
6 outstanding media inquiry about it, so
7 obviously, this was something that continued
8 to require some attention. Precisely what, I
9 don't know.

10 MR. TEITELBAUM: Did somebody
11 during this conversation make that point?

12 THE WITNESS: I do not recall,
13 but again, the predicate to the entire
14 sequence was the media inquiries that were
15 made in early May, as they had been
16 throughout the months.

17 If you back and do a Lexus
18 search, you will see many inquiries, and many
19 articles, about this topic.

20 MR. TEITELBAUM: At this meeting,
21 did you have any suggestion that Mr. Dopp was
22 directly or indirectly in communication with
23 the State Police concerning the movements of
24 Senator Bruno in connection with the State
25 aircraft?

1 THE WITNESS: I have no idea.
2 I have no idea where the
3 information came from, or how it was
4 generated.

5 MR. TEITELBAUM: What information
6 are you now referring to?

7 THE WITNESS: Whatever
8 information there may have been about where
9 Senator Bruno went.

10 MR. TEITELBAUM: Did Mr. Dopp
11 share that information with you during this
12 time frame?

13 THE WITNESS: As I said, there
14 was a general statement that he believed he
15 was not doing governmental work, but was
16 doing fund-raising.

17 Where that information came from,
18 I do not know.

19 And obviously, fund-raising
20 events are publicized events. They're big
21 events that generate media coverage.

22 How and where the information
23 came from, I do not know.

24 MR. TEITELBAUM: Did he show you
25 an itinerary of Senator Bruno?

1 THE WITNESS: I do not believe I
2 saw an itinerary.

3 There was a reference to either
4 the C.V. Starr or AIG conversation. But
5 beyond that, no.

6 MR. TEITELBAUM: What was the
7 reference?

8 THE WITNESS: A reference to his
9 stopping at, or having a meeting at, one of
10 those two offices.

11 MR. TEITELBAUM: What did Mr.
12 Dopp say, as best you can recall?

13 THE WITNESS: It was known that
14 they are contributors to the Republican
15 Party, or to Senator Bruno.

16 MR. TEITELBAUM: Did you say
17 anything in response to Mr. Dopp?

18 THE WITNESS: I said, "Look, they
19 could have been discussing insurance
20 policies," who cares.

21 MR. TEITELBAUM: Did anybody else
22 who was a participant in this conversation
23 say anything in response to Mr. Dopp
24 conveying that information.

25 THE WITNESS: I have no

1 recollection.

2 And again, I don't know if it was
3 Darren who provided this specific
4 information.

5 C.V. Starr is referred to here in
6 the draft press release. I don't know if it
7 was C.V. Starr or AIG that was referred to.
8 Obviously, there is a nexus between the two.

9 But again, my view is he could
10 have been doing very legitimate government
11 work, discussing a multitude of issues.

12 MR. TEITELBAUM: Were you aware
13 of that time of Mr. Dopp being in possession
14 of a Bruno itinerary?

15 THE WITNESS: No, I was not.

16 MR. TEITELBAUM: Did you see him
17 holding any papers in his hand when you had
18 this conversation?

19 THE WITNESS: I have no
20 recollection.

21 MR. TEITELBAUM: Did he hand any
22 papers to anybody else who was a participant
23 in this conversation?

24 THE WITNESS: I simply don't
25 recall.

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1 MR. TEITELBAUM: In looking at
2 Commission's 30, in the second paragraph,
3 after the colon --

4 THE WITNESS: The second
5 paragraph after the colon.

6 MR. TEITELBAUM: I'm sorry, the
7 beginning after the colon, the words "the
8 State plane and helicopter may be used only
9 for official state business."

10 THE WITNESS: Yes.

11 MR. TEITELBAUM: Is that
12 consistent with what your understanding was
13 at that time, May 17th, as to how the State
14 plane and helicopter may be used?

15 THE WITNESS: No.

16 MR. TEITELBAUM: What was your
17 understanding?

18 THE WITNESS: Well, the rule as
19 articulated by the Ethics Commission, as I
20 understood it, was that there needed to be
21 some mix of purposes, one element of which
22 would be governmental.

23 Now, what those proportions were
24 was, to a certain extent, the crux of the
25 issue.

1 And hence, as we discussed
2 earlier, the crafting of the certification as
3 it was crafted, you can insert the word
4 "exclusive" -- it was meant to ensure that
5 there was some governmental purpose.

6 Mr. BROCHIN: Is this a good
7 place for a break?

8 THE WITNESS: Are we done?
9 (Laughter.)

10 THE WITNESS: That wasn't meant
11 to be funny.

12 MS. TOOHER: Yes.
13 (Recess had.)

14 BY MS. TOOHER:

15 Q Governor, I'm going to show you
16 what has previously been marked as
17 Commission's Exhibit 5.

18 (Witness reviewing document.)

19 Q I'll ask you if you've seen this
20 document before.

21 A I'm not aware that I have.

22 Let me put it this way. I
23 certainly don't recall seeing it in the time
24 frame of May, June, July.

25 Whether I have seen it

1 thereafter, as these investigations have
2 unfolded, I don't know.

3 Q So you were never provided a copy
4 of Commission's 5 during the May time frame?

5 A I do not recall seeing it, no.

6 Q When was the first time that you
7 saw this document?

8 A I'm not sure if I've ever seen
9 it. But as I said earlier, there were so
10 many documents that I saw in the course of
11 this investigation, I may have, but I don't
12 know.

13 Q Governor, I'm showing you what
14 has previously been marked as Commission's
15 42.

16 A Yes.

17 Q And I ask if you can identify
18 this document.

19 A Well, it appears to be an e-mail
20 that I sent to Rich Baum.

21 Q And the address, the
22 lawrence@lausp.com, that is your e-mail
23 address?

24 A That is my Blackberry address,
25 yes.

1 Q And the subject of the e-mail,
2 "Idea about JB, I want to discuss with you."

3 A Yes.

4 Q Do you know what you were
5 referring to there?

6 A No, I do not.

7 Q This is May 15th. This is around
8 the time of the May 17th discussion.

9 A That is correct.

10 Q And Rich Baum at that time was
11 serving as your Secretary; is that correct?

12 A As he did throughout my tenure as
13 Governor, that's correct.

14 Q But you have no idea what the
15 reference here was concerning JB?

16 A None whatsoever.

17 Q And JB would have been?

18 A I assume it's Joe Bruno.

19 Q I'm handing you what has
20 previously been marked as Commission's
21 Exhibit 43.

22 Could you take a moment to review
23 the document.

24 (Witness reviewing document.)

25 Q I ask you if you can identify

1 this document.

2 A It appears to be a sequence of
3 e-mails between me and Rich Baum.

4 Q And I want to draw your attention
5 to the top line of the e-mail which
6 indicates, "I want to punch back at him. He
7 is making personal attacks, and I'm going to
8 really go after him at some point."

9 Do you know who that refers to?

10 A In the context here, it was
11 Senator Bruno, yes.

12 Q And when you say, "I'm going to
13 go after him at some point," what are you
14 referring to?

15 A Reveal the hypocrisy of what he
16 was saying in his personal attacks against me
17 and my wife.

18 Q And Senator Bruno was making
19 personal attacks against you and your wife
20 during this time frame?

21 A That is correct.

22 Q How were you aware of this?

23 A Media reports, daily.

24 Q I'm sorry, you said "daily"?

25 A Yes.

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1 Q And did you discuss this e-mail
2 further with Mr. Baum and the concept of
3 punching back at Senator Bruno?

4 A What I discussed was the issue of
5 the magnitude of 1199's contributions to the
6 Republican Party, and the nexus between that
7 and their welfare policy, as a discussion
8 that we should have.

9 Q And the date on this e-mail is
10 May 16, 2007; is that correct?

11 A It seems to be, yes.

12 Q And that is around the same time
13 you're having the conversations concerning
14 Senator Bruno's use of the plane with Darren
15 Dopp?

16 A As I said, I don't know if those
17 conversations were prior to or after the date
18 of the draft press release.

19 Q That date being May 17th?

20 A That's correct.

21 Q Were there ever conversations
22 concerning use of the State plane, Senator
23 Bruno's use of the helicopter, as a means of
24 punching back at Senator Bruno?

25 A Not that I recall, no.

1 This, as you can see, from the
2 e-mail chain, relates to 1199.

3 The sequence here is that -- and
4 again, I did not, don't want to speculate --
5 but the idea most likely that I was referring
6 to on the 15th, if there is any nexus, is to
7 this issue of highlighting the magnitude of
8 fund-raising from various unions. And that
9 was a topic of conversation.

10 Q But in the conversations that
11 Darren brought to you about Senator Bruno's
12 potential improper use of the helicopter, was
13 it ever discussed as a means of getting back
14 at Joe Bruno?

15 A In this May time frame, I have
16 absolutely no recollection of that.

17 This conversation was separate
18 and apart from the conversation relating to
19 the press release.

20 MR. TEITELBAUM: Mr. Spitzer,
21 just so the record is clear, how much would
22 it have meant, the words that follow subject,
23 why has the State PTY, the beginning of that
24 statement.

25 THE WITNESS: I wanted us to

1 highlight the fact that, having just gone
2 through, as you may remember, a very
3 acrimonious budget debate, where 1199 spent
4 upwards of \$10 million advertising against
5 our effort to get health care reform. And
6 Joe Bruno had been essentially carrying their
7 water during that time, I wanted it clear
8 that 1199 and Joe Bruno had this very close
9 relationship at many levels, and that was the
10 context in which my effort to get both health
11 care reform and campaign finance reform was
12 deemed valid.

13 And his attacks, personal and
14 rather vitriolic attacks against me and
15 Silda, I thought were beyond the pale of what
16 was appropriate, and I wanted to respond by
17 getting this information out, which I thought
18 was relevant to the topic of health care
19 reform, and campaign finance reform.

20 MR. TEITELBAUM: In terms of the
21 full list, what does that refer to?

22 THE WITNESS: Why did the State
23 party not -- I guess it should have been "put
24 out." The o-u-t is probably "put out a full
25 list that it gave of Bruno fund-raising."

1 I'm typing this on the
2 Blackberry. The keys are too small, and my
3 thumbs are too big.

4 It referred to a desire to get
5 out a list of the full magnitude of
6 contributions from 1199 and others to the
7 Republican Party during this time frame,
8 which is the essence of campaign finance
9 reform.

10 MR. TEITELBAUM: In Mr. Baum's
11 response to you, when he says there are
12 things he's done which we can publicize, what
13 was your understanding of what Mr. Baum was
14 referring to?

15 THE WITNESS: I don't know.

16 MR. TEITELBAUM: Did you ever
17 have a conversation with him with respect to
18 this?

19 THE WITNESS: I don't recall any
20 conversation about that.

21 As you can see, my frustration
22 was the nature of the personal attacks around
23 this time, they were rather regular, and
24 addressed not only to me, which was fine, but
25 my wife.

1 Q Did you ever have a conversation
2 during the May 17th time frame with Darren
3 Dopp concerning where he was getting
4 information on Senator Bruno?

5 A No, I didn't.

6 Q Did he ever relate to you that he
7 was getting information from Bill Howard?

8 A I do not believe he did.

9 Q At any time.

10 A I do not recall his ever
11 conveying to me or my ever asking where any
12 of this information came from.

13 Q Did he discuss with you during
14 the May 17th time frame recommendations he
15 had gotten from Peter Pope concerning the
16 information that he had on Senator Bruno?

17 A I do not recall ever having that
18 conversation.

19 Q Did he ever relate to you that
20 Peter Pope made suggestions concerning the IG
21 and Senator Bruno's use of the IG?

22 A I have no recollection of that.
23 I became aware of that only in the subsequent
24 publication of that information in the course
25 of these inquiries.

1 Q And following the May 1st
2 conversation, did there come a time when
3 Darren Dopp came back to you concerning
4 Senator Bruno's use of the plane?

5 A Came back to me with respect to
6 media inquiries.

7 So again, it's like emphasis, he
8 did not come back and say we should discuss
9 Senator Bruno's use of the plane. And this
10 is a conversation at the very end of June,
11 where he raised the issue of the media
12 inquiries relating thereto.

13 Q And between the May 17th inquiry
14 and the end of June, did Mr. Dopp ever relate
15 to you that there was any activity from the
16 media concerning Senator Bruno's use of the
17 plane?

18 A I do not recall any conversations
19 between the May conversation, 17, give or
20 take, and the end of June, on that issue.

21 That was the period, the
22 intervening five, six, seven weeks was the
23 period of the legislative session, during
24 which we had a sequence of public meetings,
25 and back and forth on many, many issues.

1 But I do not recall this issue
2 ever coming up.

3 MR. TEITELBAUM: Mr. Spitzer,
4 there is testimony in the record that Darren
5 Dopp, on a continual basis, was keeping you
6 apprised of his activities about Senator
7 Bruno's use of the State aircraft.

8 Did that happen?

9 THE WITNESS: I have no
10 recollection of that.

11 This was a period, as I just
12 said, during the middle of May, the end of
13 June, during which time we were trying to
14 negotiate a multitude of bills, and there was
15 activity on many, many issues.

16 And I have no recollection of
17 this issue being raised.

18 MR. TEITELBAUM: Just so we are
19 clear, the testimony in the record is that he
20 was conferring with you frequently during
21 this period. You have no recollection of
22 that happening, or it didn't happen?

23 THE WITNESS: Herb, I'm giving
24 you my absolute best recollection, which is
25 that I have no recollection of it happening.

1 MS. HIRSHMAN: Do you want to do
2 something with this document?

3 MS. TOOHER: Yes.

4 Q You have been provided a copy of
5 what has been marked Commission's 46.

6 Can you take a moment and review
7 this document.

8 (Witness reviewing document.)

9 A Okay.

10 Q Can you identify this document?

11 A It seems to be, again, an e-mail
12 chain among several parties indicated.

13 Q And who is it between?

14 A Well, various e-mails, but I
15 think it speaks for itself.

16 Q And I'm going to take you up the
17 chain from the bottom.

18 There is the original message --

19 A And this is not the complete
20 document. I assume that there are -- the
21 original message, this is -- you've given us
22 one page, and a Bates No. 803.

23 That header there would indicate
24 that there is an e-mail that preceded this,
25 as well.

1 Q The header --

2 A The very bottom of the page,
3 Exhibit 46, there is a header from Laurence
4 to Darren Dopp, but there's no content there.
5 I assume that there was some content beneath
6 this in the e-mail chain.

7 I want to clarify that this is
8 not the entirety.

9 Q The full chain of the e-mail?

10 A Correct. My recollection is
11 good. The CN numbers.

12 Q And the CN numbers being poll
13 numbers?

14 A That's correct.

15 Q Going up the chain to the second
16 entry that appears to be from you at the
17 Laurence e-mail account, to Darren Dopp, Rich
18 Baum and Christine Anderson, I want to draw
19 your attention to the last sentence, which
20 reads, "I also want to discuss a post session
21 strategy regarding Bruno and travel
22 generally."

23 A Yes.

24 Q Can you tell me what you're
25 referring to there.

1 A Yes.

2 This is on May 27th, and I'm
3 saying that we need to think ahead to how we
4 will, in the post June 21, which had been the
5 date, I believe, that Senator Bruno had said
6 the Senate would conclude its legislative
7 activities, how do we deal with Senator Bruno
8 in terms of outstanding legislative issues,
9 and what we want to either accomplish
10 thereafter that remains open.

11 And the travel references to my
12 effort, which had begun earlier in the year,
13 and you can look at the itineraries from post
14 June 21, to travel around the state,
15 explaining what we got done, what we didn't
16 get done, and we need to begin to formulate
17 that effort.

18 The uncertainty being we
19 obviously didn't know what would and wouldn't
20 get done between then and June 21, but we
21 needed to be prepared to undertake that
22 effort.

23 Q So the post session strategy
24 regarding Bruno and travel, does that have
25 anything to do with Senator Bruno's use of

1 the helicopter?

2 A Nothing at all. It was my
3 travel.

4 If you look at the itinerary,
5 after session, you will see there was a
6 sequence of trips that were the result of our
7 conversation.

8 Q And if we continue up the e-mail
9 chain to the top entry -- and again, I draw
10 your attention to the last sentence, -- I'm
11 sorry, the second to last sentence.

12 "I presume the Bruno story runs
13 tomorrow."

14 A Yes.

15 Q Do you know what that reference
16 is to?

17 A I have no idea. It was May 27th.
18 I have no idea.

19 It obviously was something that
20 was kicking around that people knew of that
21 we were referring to.

22 Q So when you say, "The Bruno story
23 runs tomorrow," what do you mean by that?

24 A I just told you, I have no idea.
25 I don't know which story it was.

1 Q But "runs tomorrow" means that
2 it's going to appear in the press?

3 A I would assume so, yes.

4 But you could go to the media on
5 the 28th or 29th and see what story there
6 was. I have idea what story.

7 Often the media asks for input on
8 stories, so you know what they're working on,
9 and you know what is going to be run.

10 Q In looking to the media following
11 the May 27th exchange, there was a story on
12 June 3rd concerning Senator Bruno and the
13 Abruzessee matter.

14 Are you familiar with that story?

15 A Am I familiar with the matter?

16 Q Yes.

17 A In what way?

18 Only from the newspaper stories
19 about it.

20 Q And you became aware of the
21 stories on June 3rd, on or about June 3rd?

22 A I don't know.

23 I only know of the name
24 Abruzessee, and those allegations, from the
25 newspaper stories that have been run.

1 And if June 3rd was the first
2 story, then that's the first date I knew
3 about it.

4 I know nothing about it beyond
5 what's been in the media.

6 Q And how did you become aware of
7 it the Abruzessee story?

8 A The press.

9 Q I'm going to show you what has
10 been marked as Commission's Exhibit 47. It's
11 a chain of e-mails dated 6/3/2007.

12 A Yes.

13 Q Can you identify this document?

14 A Well, I can identify the last --
15 well, it purports to be an e-mail chain.

16 I am the recipient only of the
17 last piece of this.

18 Q I understand.

19 MS. HIRSHMAN: Reading up from
20 the bottom, the first.

21 MS. TOOHER: Yes.

22 A You notice, I received -- it was
23 sent to me. I don't know where you
24 downloaded it from.

25 I presume I received it and read

1 it. But everything above the 9:10 a.m.
2 e-mail I was not a participant of.

3 Q And the bottom entry, which is
4 addressed to you from Darren Dopp, to you and
5 Rich Baum, subject, ATU, do you know what ATU
6 refers to?

7 A I presume the Albany Times Union.

8 Q And Mr. Dopp writes, "I guess we
9 know why Bruno's folks have been so jumpy of
10 late."

11 Do you know what he was referring
12 to?

13 A Well, do I know as we sit here,
14 no.

15 A fair inference that there was
16 an article in the Times Union that morning
17 that he is referring to, yes.

18 Q And if I told you that June 3rd
19 was the release of the Abruzessee article in
20 the Times Union, would that refresh your
21 recollection as to which article he was
22 referring to?

23 A It would permit me to draw the
24 inference that that's what he is referring
25 to.

1 Again, as I said, I presume that
2 that's what it is.

3 I don't know as we sit here.
4 There are other articles, but I presume
5 that's what it was.

6 Q Did you have discussions with
7 Darren Dopp about the Abruzessee article in
8 the Times Union?

9 A Other than a cursory, "Yeah, it's
10 a problem for Joe," or something like that,
11 no.

12 I know -- as I said I know only
13 what has been in the papers about it, and I
14 have not even read most of the articles,
15 because I don't care about it.

16 MS. TOOHER: I ask you to mark
17 this as Exhibit 173.

18 (Document marked Commission's
19 Exhibit 173.)

20 MR. TEITELBAUM: Mr. Spitzer,
21 referring to Commission's Exhibit 47, were
22 there discussions around this time period,
23 June 3rd, concerning the possibility of Dopp
24 getting out a travel story concerning Senator
25 Bruno?

1 THE WITNESS: As I said, not that
2 I'm aware of.

3 And as I've said, the
4 conversations in mid-May, which I have
5 described, was one reference point. Then
6 there was no conversation that I recall about
7 this issue until conversations that I presume
8 you will talk about shortly, at the end of
9 June.

10 MR. TEITELBAUM: And did you
11 hear, were you told, that there were
12 conversations among your staff concerning
13 getting out a travel story about Senator
14 Bruno at around this time?

15 THE WITNESS: No.

16 As I said, the conversation that
17 I had in mid-May I described, and then
18 thereafter, there was not a recurrence of
19 this issue, as best as I can recall, until
20 the end of June, when it did come back.

21 Q Showing you what has been marked
22 as Commission's Exhibit 173.

23 (Witness reviewing document.)

24 A I know it's not my job to ask
25 questions, but do you know what day of the

1 week June 3rd was? Was it a weekend,
2 Saturday or Sunday?

3 Q I should, but I don't.
4 I ask you if you can identify
5 this document.

6 A It purports to be the bottommost
7 original e-mail, this is the one that we've
8 been discussing, and above it is my, what
9 appears to be my responsive e-mail to Darren
10 at about 9:12 a.m.

11 Q And so your response to Darren's
12 e-mail concerning Bruno's -- having seen --

13 A Well, this one I was probably
14 Blackberrying while I was driving.

15 The State Troopers would let me
16 drive my own minivan to town.

17 MS. TOOHER: Will you mark this
18 as Exhibit 174.

19 THE WITNESS: And that's why I
20 asked what day of the week it was.

21 Because I would get the papers at
22 the apartment, without heading to town if I'm
23 in the city, or the mansion, if I'm in
24 Albany. If I was at the farm, I would have
25 to drive to the stores to get the paper.

1 Q So the likelihood is at the time
2 you wrote this e-mail you were not at the
3 mansion?

4 A That's why I asked if it was the
5 weekend.

6 Q Or in Albany?

7 A Perhaps I was at the house in
8 Columbia County driving.

9 But not on my cell phone. I'm
10 not sure if the statute goes to
11 Blackberrying, or just the cell phone, or how
12 it defines it, but I may have pulled over.

13 MS. TOOHER: Will you mark this
14 as Exhibit 174.

15 (Document marked Commission's
16 Exhibit 174.)

17 THE WITNESS: I may have pulled
18 over and timed myself.

19 Q Showing you what has been marked
20 as Commission's Exhibit 174 --

21 A I think June 3rd was a weekend.
22 My sister got married on the 10th.

23 Q I'm showing you what has been
24 marked as Commission's 174, and ask you if
25 you can identify this document.

1 A Again, it purports to be an
2 e-mail -- the original e-mail is the one
3 we've been discussing, and above it is
4 another e-mail I sent back to Darren and to h
5 later that day, later that morning.

6 Q And do you have any understanding
7 why e-mail chains would break like this?

8 A No, I don't.

9 Q And be documented on separate
10 pages?

11 A No.

12 Q And again, in response to
13 Mr. Dopp's earlier e-mail, you respond, "Not
14 a good day for Joe." I would take that to
15 mean Joe Bruno?

16 A Yes.

17 Q "This will set off a flurry of
18 stories. We should talk later about this."

19 Did you have conversations later
20 about the Abruzessee story?

21 A I have no specific recollection
22 of our doing so, but it would seem logical
23 that we did, but I don't recall.

24 Q You don't recall having
25 conversations with either Darren Dopp or Rich

1 Baum about --

2 A I do not recall the conversation,
3 but I would say certainly it's probable that
4 we did.

5 Understand that virtually every
6 day we would talk about what was in the
7 papers, and that was the nature of the
8 Communication Director's responsibility, what
9 Abruzessee is in the papers, what does it
10 mean, what is the fallout.

11 That's what we would talk about.

12 Q What is your understanding as to
13 what the Abruzessee story was about Senator
14 Bruno?

15 A I know only that there is some
16 issue about his financial relationship and
17 business relationship with Abruzessee.

18 Beyond that, I don't know
19 nothing. I really never --

20 Q Are you aware that there is an
21 investigation concerning Senator Bruno and
22 the Abruzessee matter?

23 A Yes, I'm aware of that.

24 Q Are you aware that that
25 investigation is being conducted by the FBI?

1 A I know the FBI is participating
2 in investigations of Senator Bruno, whether
3 that is the focus or not, whether that is it,
4 I don't know.

5 I never cared about
6 investigations.

7 Q It was a fairly important story
8 concerning Senator Bruno at that time. Would
9 that be a fair characterization?

10 A One might say so. It mattered to
11 me only in terms of the context of the
12 political dynamic, and what we were trying to
13 do, what the underlying facts were.

14 I never bothered to pursue it.

15 Q When you say the political
16 dynamics and what you were trying to do, can
17 you explain that?

18 A Sure. An effort to negotiate
19 legislation through the end of session.

20 You understand this is June 3rd,
21 and we have had weekly public meetings at
22 which I am creating an agenda of substantive
23 issues, where we are hoping to reach
24 consensus, from healthy schools to DNA
25 reform, a range of issues.

1 And we were trying to navigate to
2 conclusion.

3 Q During this time frame, hadn't
4 you also made public statements concerning
5 changing the makeup of the Senate from a
6 Republican majority to a Democrat majority?

7 A I don't know.

8 I had been very clear that I
9 would support Democratic candidates for the
10 Senate, intended at some point that we would
11 be able to take the majority. That's what
12 democracy is all about.

13 Senator Bruno knew that as being
14 somehow violative of the rules of engagement
15 in Albany, which I found somewhat hard to
16 understand, even though it may have broken
17 the Code of Ethics, what they considered the
18 Code of Ethics was between governance and
19 legislators in the past.

20 I said I will campaign for
21 Democrats to pursue the agenda.

22 Now, your question said in this
23 time frame. I do not know if I had made any
24 comments about that publicly at any point
25 relevant, or precedent, or shortly

1 thereafter. So I don't know if that's the
2 case.

3 There had been a special election
4 in February, where the issue had been framed.

5 Thereafter, I don't know if there
6 had been any public commentary about it.

7 Q You mentioned earlier that there
8 did come a time where you had a subsequent
9 conversation with Darren Dopp about media
10 inquiries and Senator Bruno.

11 A Yes.

12 Q Can you tell me how that came
13 about.

14 A Sure.

15 This was at the end of June, at
16 post session. By post session, I believe it
17 was June 21st that the Senate publicly
18 announced it was done with this legislative
19 session.

20 Several days thereafter, Darren
21 came into my office and indicated that there
22 continued to be media inquiries about use of
23 the plane, Senator Bruno's use of the plane,
24 and that there had been or there was going to
25 be a FOIL served. And he said, "Should we

1 give them the information?"

2 And my response was, "Sure, screw
3 it, what choice do we have. It's public
4 information," and I indicated that we should
5 do so.

6 This was obviously not contrary
7 to, but a marginal difference from my May
8 statement, in which I had said, "Who cares."

9 This was a media request, and I
10 said, "Answer the media request.

11 "Give him permission to do what
12 we need to do to answer the FOIL."

13 Q Had Dopp told you in May that
14 there were media requests?

15 A Yes.

16 As I've said, the predicate to
17 the entire conversation was that there were
18 media requests.

19 That was back in early May when
20 that had come to light.

21 Q Had you advised him to respond to
22 those e-mail requests?

23 A The conversation in May was,
24 remember how I described it, it was, "This is
25 a silly issue, who cares."

1 This is not an area where anybody
2 will be ultimately found to have violated the
3 law, because the law is, unfortunately,
4 improperly porous, but so who cares.

5 Q And now in June, the conversation
6 is framed somewhat differently?

7 A My recollection is it was framed
8 more in the context of the media is back
9 asking for it, and hence my response was,
10 "What choice do we have? Screw it. Answer
11 the media."

12 Q And at this time, were you
13 advised as to what media this was?

14 A No.

15 Q And did he indicate to you if
16 there was more than one media request?

17 A I do not know.

18 Q And did he relay to you that
19 there had been a specific FOIL request?

20 A I don't know if he said that
21 there was going to be a FOIL, that there had
22 been a FOIL. There was a stated intent to
23 serve a FOIL.

24 But there was an understanding
25 that there was going to be a FOIL that would

1 be served, or had been served.

2 MR. TEITELBAUM: Did Mr. Dopp
3 tell you what information was being sought by
4 the media?

5 THE WITNESS: No, other than the
6 generic information about use of the plane.

7 MR. TEITELBAUM: What do you mean
8 by that?

9 THE WITNESS: Precisely what I
10 said, information about use of the plane as
11 it related to government and political
12 purposes.

13 That was the very issue that had
14 been discussed.

15 That was the description given to
16 me.

17 MR. TEITELBAUM: Is that what Mr.
18 Dopp said to you?

19 THE WITNESS: That's my
20 recollection of the substance of what he
21 said.

22 Or he may not have even needed to
23 say it, because it was implicit in all the
24 conversations that media requests for the
25 plane related to, "Are you going to political

1 events using the State plane?" That was
2 always the inquiry.

3 MR. TEITELBAUM: Did you
4 understand the inquiry to mean that they
5 wanted, "they" being the media, Senator
6 Bruno's ground itinerary?

7 THE WITNESS: I don't know if
8 they wanted that from us, if they already had
9 that. I don't know.

10 They wanted information about use
11 of the plane.

12 My schedule -- I don't know what
13 the availability of his schedule is.

14 Now I've learned more about it
15 through this investigation. Back then, I
16 didn't know.

17 My schedule was made public every
18 day.

19 MR. TEITELBAUM: And the time you
20 had this conversation in the latter part of
21 June with Mr. Dopp, did Mr. Dopp tell you to
22 what extent, if any, he had been already
23 gathering documents?

24 THE WITNESS: I do not recall
25 having any such conversation.

1 MR. TEITELBAUM: Did he indicate
2 to you at that time that Bill Howard was in
3 communication with the State Police to have
4 them gather documents?

5 THE WITNESS: No. I never had
6 that information, or got involved in any
7 conversation, or had any conversation about
8 how the documents were being gathered, or
9 information was being generated.

10 Now, obviously, because of the
11 May conversation I knew the reference to C.V.
12 Starr, I knew there was some information
13 about where Senator Bruno had been. But I
14 never had any conversation about where, about
15 how that information was gathered, or from
16 whom.

17 The conversation with Darren at
18 the end of June was probably thirty seconds,
19 at most.

20 MR. TEITELBAUM: You are literal
21 about that?

22 THE WITNESS: Thirty seconds? Oh
23 yes, at most, yes. Thirty seconds, at most,
24 yes.

25 At most thirty seconds.

1 He was walking from the
2 conference room to my office through to the
3 adjacent offices.

4 Very brief.

5 Q I just want to be clear.

6 Your understanding as to the
7 media requests at this juncture are
8 concerning whom?

9 A My understanding is that they
10 relate to all of us, meaning anybody with
11 access to the plane, which is primarily me,
12 Senator Bruno. I don't think Shelly ever
13 used the plane. The Lieutenant Governor, the
14 Chief Judge. I don't know if Judith ever
15 used it.

16 It really was me and Joe,
17 although this conversation related to Joe.

18 And I'm distinguishing for you
19 between the conversation which related to
20 Joe, and my understanding, which was that the
21 media inquiries about the plane were about
22 all of us.

23 Q So your understanding was that
24 the media inquiries concerned everyone who
25 was using the executive plane --

1 A That's correct.

2 Q -- and helicopter?

3 A And that goes back to the May
4 initiation of this.

5 But in May, when this set of
6 circumstances began, it was what's the
7 Governor doing with the plane, et cetera, et
8 cetera.

9 Q But this June conversation
10 between Darren Dopp and yourself concerned
11 Senator Bruno's use of the plane?

12 A That's what I just distinguished
13 for you.

14 The conversation -- the
15 conversation, my recollection, it was Darren
16 saying the media was asking about Joe, should
17 we turn over that information.

18 Information about me I presume
19 was always being turned over, because
20 everything about me was turned over all the
21 time.

22 Q So the conversation was
23 specifically concerning Senator Bruno's
24 information?

25 A Correct.

1 But your question was my
2 understanding about the media inquiries, and
3 that was broader.

4 Q That's why I'm trying to clarify.

5 A Yes.

6 Q Were you aware of any other
7 inquiries from the media concerning
8 information on Joe Bruno that came to the
9 Executive Chamber?

10 A Not specifically, no.

11 Q And was there ever a discussion
12 that they should go to someone else to get
13 this information?

14 A I'm not sure I understand. A
15 media inquiry -- I'm not sure I understand
16 the question.

17 Q Was there ever a discussion that
18 they should go directly to the State Police
19 concerning Senator Bruno's use of the
20 aircraft?

21 A I'm not aware of any -- I was not
22 a participant in any such conversation.

23 Q Was there ever a discussion that
24 they should go to Senator Bruno's office
25 directly to obtain the information?

1 A I was not a party to such
2 conversation.

3 Q Were you aware that any
4 conversations took place?

5 A I'm not aware of such
6 conversation.

7 MR. TEITELBAUM: Besides Darren
8 Dopp, Mr. Spitzer, was anybody else in
9 communication with you during this time
10 period at or around May 17th and this June
11 conversation that we are now talking about
12 concerning Senator Bruno's use of the
13 aircraft?

14 THE WITNESS: I don't recall
15 having other conversations.

16 I have the vaguest of
17 recollections that somehow issue of plane use
18 came up in a conversation with David Nocenti,
19 but I don't know what context. I don't know
20 if it was related to Senator Bruno or not.

21 MR. TEITELBAUM: And during this
22 time period, did you see anything, any
23 document, that would indicate to you, that
24 did indicate to you, that Darren Dopp,
25 directly or indirectly, was having the State

1 Police gather documents?

2 THE WITNESS: As I said earlier,
3 I have no recollection of ever having a
4 conversation about how, or whether, or to
5 what mechanism he was gathering documents, or
6 from whom.

7 So, as I've said, public
8 information about use of the plane and on
9 what day who uses it.

10 MR. TEITELBAUM: You didn't see
11 anything?

12 THE WITNESS: No.

13 To this day I have not seen what
14 was turned over pursuant to the FOIL, nor do
15 I know how it was gathered.

16 Q Was anyone else present during
17 these conversations with Darren?

18 A There was one, singular, but not
19 plural.

20 I don't believe so.

21 Q So there was no one else present
22 when Darren Dopp discussed with you the media
23 request for Joe Bruno's use of the plane?

24 A As I said, he was walking from --
25 my recollection is that he was walking from

1 the conference room.

2 Do you know the Executive Chamber
3 physical structure?

4 He was walking from the
5 conference room through my office, to the
6 office where Marlene Turner would sit, and
7 that it was during that time period when he
8 was walking through there that we had this
9 conversation.

10 And the duration was simply
11 limited by the length of time that it took to
12 walk through.

13 Q And did he tell you specifically
14 that he had received a FOIL request at that
15 time?

16 A As I said, I do not recall
17 whether he said he had received it, he would
18 receive it, but there was knowledge that
19 there was going to be a FOIL as the predicate
20 to turning over the information.

21 And, as you know, I'm sure, very
22 often the media will say we'll get you FOIL,
23 afterwards we want this, that, the other
24 thing. And then they'll figure out precisely
25 how to craft the FOIL.

1 Q I'm showing you what has been
2 marked as Commission's 66.

3 (Witness reviewing document.)

4 Q I ask you if can identify this
5 document.

6 A It purports to be an e-mail from
7 Jim Odato to Darren, a FOIL request dated
8 June 27th.

9 Q Have you ever seen this document
10 before?

11 A Very recently, in preparing for
12 this deposition.

13 Q So the date of the document is
14 June 27, 2007.

15 A Right.

16 Q In and about that time frame, had
17 you seen this document?

18 A No.

19 I have not seen -- had not seen
20 this document until very, very recently.

21 Q So did Darren Dopp ever show you
22 a FOIL request concerning Senator Bruno's use
23 of the plane?

24 A No, not that I'm aware of.

25 Q Did he ever show you a FOIL

1 request concerning your own use of the plane?

2 A No.

3 As I testified an hour or so ago,
4 I'm not aware that I ever really saw any FOIL
5 requests during my tenure as Attorney General
6 or Governor.

7 We got many of them, obviously.
8 I was not on the circulation list for FOIL
9 requests.

10 Q And did you discuss the FOIL
11 request for use of the plane in the June, the
12 end of June, with anyone else in the chamber?

13 A No.

14 As I've said, the conversation
15 was with Darren, and it was a brief
16 conversation.

17 He said, "They're back, they want
18 this information. There is a FOIL, there is
19 going to be a FOIL," whatever it may be.

20 I said -- and this was a slight
21 shift, obviously, from what I had said in
22 May, when I was completely dismissive of it.

23 They said the media's asking,
24 there's a FOIL, there's going to be a FOIL.

25 So I said, basically, "What

1 choice do you have? It's public information,
2 who cares, screw it."

3 MR. TEITELBAUM: Was he asking
4 for permission to comply with the FOIL
5 request during this conversation?

6 THE WITNESS: I viewed it more as
7 informational than permission, because it's
8 not up to me to approve compliance with
9 FOILS.

10 And that's why it was more
11 they're back, they're going to do it. We
12 didn't give it to them in May, they want it,
13 it's a FOIL. Here we go.

14 That was the tenor of it, and how
15 I understood it.

16 Q And did you have any subsequent
17 conversation with Mr. Dopp concerning the
18 FOIL or the response?

19 A Well, do you want to limit that
20 in time?

21 Obviously, once the article came
22 out, there was an explosion, shall we say, of
23 allegations.

24 Sure, there were subsequent
25 conversations.

1 If you mean between the
2 conversation I've just described, when I was
3 in my office, and when the article came out,
4 I do not recall.

5 We might have.

6 He might have said we gave them
7 the information.

8 But I do not recall, I have no
9 recollection of the conversation.

10 Q Between the end of June, say,
11 approximately June 26th or 27th, when the
12 FOIL request came out, and July 1st, which is
13 the date of the Albany Times Union article,
14 did you have any conversations with Darren
15 Dopp concerning his response to the FOIL for
16 information on Joe Bruno and his use of the
17 helicopter.

18 A I do not recall those
19 conversations.

20 Q Did you have conversations with
21 anyone else in the Executive Chamber?

22 A I don't recall conversations. It
23 may have been an offhand comment by Darren or
24 somebody else, yes, they're going to run the
25 story on the travel stuff, but I have no

1 recollection of it.

2 Q Are you aware whether Darren
3 responded to the FOIL request?

4 A I'm aware now that he did.

5 Q When did you become aware of
6 that?

7 A I have no idea.

8 Q Prior to the article being
9 written?

10 A Inevitably, I knew based upon my
11 conversation with him.

12 Let me rephrase that.

13 Can't say I knew. I guess I
14 presumed he was going to comply with it in
15 short order.

16 But as I said earlier, I have not
17 seen the documents. To this day I haven't
18 seen them, so I don't know when he did so, or
19 what he turned over.

20 So I just presumed that he was
21 going to turn over that information.

22 Q So Mr. Dopp never showed you the
23 documents that he was providing in response
24 to the FOIL request?

25 A No.

1 MR. TEITELBAUM: You have read
2 the District Attorney's recent report of
3 investigation? Have you seen that?

4 THE WITNESS: Yes, I have.

5 MR. TEITELBAUM: Did you see that
6 there was a reference in that report to, I
7 guess I'm quoting from Dopp, that Dopp showed
8 you the FOIL materials that were going to be
9 released?

10 THE WITNESS: Honestly, I read
11 the report quickly. I don't remember
12 seeing -- if it's in there, I accept your
13 presentation, obviously.

14 As I just said, I to this day
15 have not seen the information that was turned
16 over to Jim Odato.

17 MS. TOOHER: Will you mark this
18 as Commission Exhibit 175.

19 (Document marked Commission's
20 Exhibit 175.)

21 MR. TEITELBAUM: On page 12 of
22 Exhibit 175, there is a reference in the
23 third full paragraph here, "Dopp stated that
24 he 'brought the records into the Governor's
25 conference room,' and he laid them on the

1 table."

2 A I think that was the "maybe" he
3 is describing in the top half of that
4 paragraph, if I understand their recitation
5 of his testimony properly. And obviously, I
6 wasn't there.

7 And as I've said about that
8 meeting, I did not look at records, and have
9 no recollection of what other people did when
10 I was not there. Obviously, I don't know
11 about that.

12 But if you continue down that
13 paragraph.

14 And he said another time the
15 Governor saw the travel records.

16 As I said, to this day, I do not
17 know what these travel records look like, or
18 what form they took when they were turned
19 over, because I have not seen the materials
20 that were turned over.

21 MR. TEITELBAUM: Just so that we
22 have a crystal clear record, Dopp's statement
23 that he brought the records into your
24 conference room and laid them on the table,
25 did he, to your knowledge, ever show you

1 these travel records, and lay them on the
2 table?

3 THE WITNESS: I don't recall
4 looking at the records, or seeing them
5 arrayed on the conference table there.

6 I recall, as I've said to you,
7 saying that the issue was one that was maybe
8 material, and who cares, and being
9 dismissive.

10 The second meeting, the
11 conversation, it wasn't a meeting, it was in
12 my office, not a conference room.

13 And as I've said, I do not
14 recall, and to this day have not seen the
15 documents that were turned over or generated,
16 produced, whatever the word may be.

17 MR. TEITELBAUM: It says also in
18 that paragraph, "When asked if the Governor
19 ever saw Bruno's itineraries, Dopp said that
20 he did, because either he or the Governor
21 commented that they were unremarkable."

22 A Again, it's not clear to me
23 whether this is the May meeting or the
24 conversation at the end of June.

25 Either way, I did not look at the

1 itinerary.

2 As I've said, there is a
3 reference to a meeting at C.V. Starr or AIG,
4 I forget how it's referred to, which I said
5 was irrelevant, because they could have been
6 discussing insurance policies.

7 So that's why I didn't look at
8 records, I was responding in May to the
9 issue.

10 And in June I'm not sure if
11 Darren says I looked documents in June or
12 not.

13 MR. TEITELBAUM: What I'm
14 focusing on now is statements that you saw,
15 actually saw, these travel records.

16 THE WITNESS: As I've said, I did
17 not look at these records. I have no
18 recollection.

19 To this day, I don't know what
20 was he turned over in response to FOIL.

21 I don't know if you have a copy
22 of what was transmitted. You could show it
23 to me.

24 I do not believe I've ever seen
25 what was turned over.

1 MR. TEITELBAUM: It goes further.
2 It says, "Dopp stated that it was
3 toward "the time when the records were about
4 to be released."

5 At that point Dopp, "another time
6 when the Governor saw the travel records."

7 MS. HIRSHMAN: I think we just
8 need to clarify something.

9 Because you're referring to a
10 series of sentences without the relevant
11 references to the time frame, at least as
12 they are contained in the report.

13 MR. TEITELBAUM: Let me clarify
14 it.

15 We're now talking about a time
16 frame around the time that the records were
17 about to be released to the media.

18 THE WITNESS: End of June.

19 MR. TEITELBAUM: The end of June.

20 THE WITNESS: Okay.

21 MR. TEITELBAUM: I think it was
22 the 28th, actually.

23 THE WITNESS: FOIL was received
24 on the 27th, and the documents are turned
25 over thereafter.

1 MS. HIRSHMAN: There's no
2 question pending.

3 THE WITNESS: I'm asking you.

4 MR. TEITELBAUM: You have the
5 sequence right.

6 THE WITNESS: Okay.

7 MR. TEITELBAUM: So around that
8 time Dopp stated, apparently to the District
9 Attorney, in connection with this
10 investigation, as reflected in 175, that you
11 saw the records shortly before they were to
12 be released, which was around the 28th.

13 THE WITNESS: Okay.

14 MR. TEITELBAUM: Is that true?

15 THE WITNESS: I have no
16 recollection of that fact.

17 And as I've just said, I don't
18 believe I have ever seen the records that
19 were turned over.

20 And if you have them, I could
21 look at them.

22 But I do not know what records
23 were turned over, or what form they took,
24 what they looked like.

25 MR. TEITELBAUM: It says at that

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1 time you directed him to release the records.
2 Is that accurate?

3 That's on page 13, the first full
4 paragraph.

5 THE WITNESS: What page, I'm
6 sorry, 13?

7 MR. TEITELBAUM: Yes.

8 THE WITNESS: The very top?

9 MR. TEITELBAUM: Yes.

10 THE WITNESS: No, I don't
11 believe -- first of all, that is not a
12 quotation, so I think this is --

13 MR. TEITELBAUM: That's correct.

14 THE WITNESS: This is language
15 that is chosen by whoever drafted this
16 report.

17 And clearly, I do not agree that
18 I directed him to release the records.

19 And I specifically, when asked by
20 them whether I directed him to release the
21 records, I said no, I did not. Because I did
22 not then, and nor do I now, view the
23 conversation I've recounted to you as being a
24 direction, or a directive, or a command,
25 whatever equivalent synonym you might choose,

1 was as you, I think said earlier, more an
2 acknowledgment, or permission, or was it
3 FOIL, you do what you've got to do, which is
4 separate and apart from a direction.

5 MR. TEITELBAUM: On page 10 of
6 Exhibit 175, look at the last paragraph,
7 beginning with the words "the end of June."

8 THE WITNESS: Yes.

9 MR. TEITELBAUM: Did you ever
10 have a conversation with Dopp and Baum in
11 which Dopp asked you and Baum what you wanted
12 him to do in connection with Odato's looking
13 for aircraft records?

14 THE WITNESS: We're parsing this
15 more carefully than it is possible.

16 I do not recall, as I've said,
17 the conversation involving three parties,
18 Darren, Rich and me.

19 I recall the conversation I told
20 you, in which it was Darren and me, which is
21 other than some of the syntax and vulgarity
22 essentially consistent with his recollection
23 that I gave him permission, he says.

24 The language in here, obviously,
25 I do not recall using, I do not believe I

1 used.

2 But the second conversation, if
3 you view this as Darren says, Darren, Rich,
4 Eliot, and then Darren, Eliot, I do not
5 recall the Darren, Rich, Eliot conversation
6 at all.

7 I do, as I just told you,
8 obviously, recall the conversation with
9 Darren in which I said, fine, there's a FOIL,
10 or whatever, screw it, go ahead.

11 That was consistent with what his
12 recitation is here, not it's being a
13 direction, directive, an order, and not the
14 language used, and his description of it.

15 But the first conversation that
16 is referred to in the bottom of 10, I do not
17 recall.

18 Q That's the conversation with Mr.
19 Baum?

20 A Correct, what I refer to as three
21 people.

22 Q I think -- and again this is
23 someone else is writing it?

24 A Yes.

25 Q It appears that there was a

1 separate conversation with Mr. Baum that you
2 had that he relayed to Darren Dopp.

3 A I do not recall that.

4 Q You don't recall a conversation
5 with Rich Baum concerning the records for
6 Senator Bruno?

7 A No.

8 Your point is you can read this
9 to be three conversations, Rich, the
10 Governor, Dopp, Rich, the Governor, me and
11 Darren.

12 I recall the one I told you
13 about, which is me to Darren, in which I said
14 we have a FOIL, whatever.

15 MR. TEITELBAUM: Going back to
16 page 9, the May conversation, it says -- and
17 this is not a quote -- there's no quotations.

18 Moving forward, Dopp said the
19 Governor just wanted to "monitor the
20 situation" and "see what happens later on."

21 Now, did you indicate in words or
22 substance during that May conversation that
23 we've been talking about earlier on that you
24 wanted Dopp to monitor the situation?

25 THE WITNESS: I think I said

1 earlier I do not recall saying that in sum or
2 substance, and frankly, the word "monitor" is
3 not one I use.

4 That's not a word that I use.

5 Now, the second, the last two
6 lines of that paragraph, are consistent with
7 what I had said.

8 MS. HIRSHMAN: Which reads that
9 the Governor felt the issue was a
10 distraction.

11 A That is what I've said, my
12 recollection of that conversation, where I
13 said, "Forget it, who cares, move on."

14 Now, what is not here, this is
15 essentially one of the two reasons that I
16 articulated, the primary reason being the
17 legal conclusion that I would not perhaps
18 expect Darren to remember or focus on, this
19 is a murky area of law, one that probably
20 should be clarified, and to its credit, the
21 Commission has clarified it after all of this
22 mess came out.

23 But at this point in time, there
24 was no sufficient clarity to make sense out
25 of this.

1 MR. TEITELBAUM: So that the
2 record is clear, what I believe you're saying
3 is that beginning with the word "but," and
4 ending with the words "legislative session,"
5 that "in fact you did express."

6 THE WITNESS: Yes.

7 That is one of the two reasons
8 that I remember -- the primary reason -- that
9 is the secondary reason.

10 The primary reason was this is
11 silliness, because there are no sufficient
12 rules to make sense out of when the use of
13 the plane is proper or not.

14 You can go down to meet with C.V.
15 Starr, and they may get a contribution, but
16 they may discuss an insurance policy, and so
17 it's fine, pursuant to the rules as currently
18 understood.

19 MR. TEITELBAUM: At that time?

20 THE WITNESS: At that time, not
21 thereafter. Correct.

22 Some good came out of all of
23 this.

24 Although I don't think the checks
25 to pay back use of the plane would cover the

1 cost of all this.

2 Q Following your conversation about
3 the document in the FOIL request with Darren
4 Dopp, prior to the Times Union article.

5 A The June conversation.

6 Q The June conversation?

7 A Yes.

8 Q Did you ever contact Darren Dopp,
9 or communicate with him on the issue of when
10 the article might be coming out?

11 A I don't recall.

12 I have no recollection of doing
13 so, but it's certainly not inconceivable once
14 we were discussing issues in the press, it's
15 the sort of thing Darren and I would talk
16 about. As I said, we spoke thirty, forty
17 times a day. Every morning we would talk
18 what's in the paper, what's happening.

19 Q So if Darren indicated that you
20 had contacted him about when is the article
21 coming out, that wouldn't be inconsistent
22 with what you're saying now?

23 A It's not inconsistent with my
24 having no recollection of it, but it is not
25 something which I do recall, either.

1 But to be very frank, there are
2 references in here to phone conversations.

3 Q "Here" being Commission's 175?

4 A Yes, that is correct, to phone
5 calls that are recounted by Sandy, Darren's
6 wife, which I have absolutely no recollection
7 of.

8 Q Were there times where you called
9 Darren at odd hours of the night?

10 A It depends on what views odd
11 hours of the night.

12 I viewed it as fair game to call
13 people starting pretty much at 7:00 a.m.
14 until 10:30 or 11:00, except for Michelle.
15 She was twenty-four hours.

16 Q And at a certain point in time on
17 or about July 1st there was an article
18 concerning Senator Bruno's use of the
19 aircraft?

20 A That is correct.

21 Q Were you advised by Darren Dopp
22 when the article came out?

23 A On the day that it was out?

24 Q Yes.

25 A I think there's some e-mails back

1 and forth, and I believe this also was a
2 Sunday.

3 Am I correct?

4 Q Yes.

5 A So I think I was at also at
6 Columbia County, at the farm, and so I think
7 there may have been an e-mail indicating that
8 it was -- I may be confusing e-mails.

9 Q I'm going to show you what has
10 been marked as Commission's 85.

11 I'll give you a moment to review
12 the document?

13 A Do you want me to read the
14 article?

15 Q No, but I would just like you to
16 just flip through the various pages of
17 Commission's 85.

18 (Witness complying.)

19 A Okay.

20 Q And have you seen this article
21 before?

22 A Just so it's clear, yes, I've
23 seen the article. I have not seen any of the
24 subsequent pages.

25 Q The article comprises the first

1 two pages of the exhibit.

2 A That is correct.

3 Q The next seven pages are a number
4 of documents.

5 A Yes.

6 Q The third page is a flight
7 request for May 3rd and 4th.

8 A The Xerox is bad. I'll take your
9 representation.

10 Q If you look closely you can
11 discern that.

12 A Okay.

13 Q The fourth page, the
14 transportation assignment for Senator Bruno
15 for May 3rd and 4th?

16 A Yes.

17 Q And the page after that, again,
18 which is a copying issue, is a 33rd annual
19 spring reception document.

20 A Yes.

21 Q Have you seen those three pages
22 before?

23 A No, I have not.

24 Q Following that, again, there is a
25 flight request, May 17th, May 18th?

1 A Yes.

2 Q And a document captioned "Trip to
3 New York City, Thursday, May 17th, and
4 Friday, May 18th."

5 A Yes, that's correct.

6 Q And an invitation to an annual
7 New York Republican State Committee dinner,
8 Thursday, May 17, 2007.

9 Have you seen those documents
10 before?

11 A No.

12 I don't mean to be too technical,
13 but I think one of these was earlier marked
14 as an exhibit and shown to me about an hour
15 ago.

16 Until then, no.

17 Have I seen them other than that,
18 no.

19 Q And then, finally we have a
20 flight request for May 24th.

21 A I'm thinking John McCain was
22 speaking.

23 Q A transportation assignment for
24 Senator Bruno for May 24th.

25 Again, an invitation, May 24,

1 2007, for a food industry reception honoring
2 New York Senator Majority Leader Joe Bruno.

3 Have you seen these documents
4 before today?

5 A I do not believe so, no.

6 I was not invited to these
7 events.

8 Although I was listed in the
9 green book in my first year as Attorney
10 General as a Republican, so I got invited to
11 the Republican Convention. They corrected
12 it.

13 Q I'm showing you what has
14 previously been marked as Commission's
15 Exhibit 67.

16 (Witness reviewing document.)

17 Q A document that leads off, "For
18 background only."

19 A Yes.

20 Q I ask you if you've seen this
21 document before.

22 A I don't believe so, no.

23 Was this produced somewhere?

24 I don't believe so.

25 But I want to be careful, as I've

1 said, I've seen many documents in the past
2 week or two, just getting ready for this.

3 I don't think I've seen this one
4 as part of it.

5 But did I see it during the
6 period that I was Governor, no.

7 MS. TOOHER: Will you mark this
8 as Commission's Exhibit 176.

9 (Document marked Commission's
10 Exhibit 176.)

11 MR. TEITELBAUM: Did you ever
12 learn from anybody during the period of time
13 that you were Governor that Darren Dopp had
14 prepared a background piece for the press
15 concerning the subject of Senator Bruno's use
16 of State aircraft?

17 THE WITNESS: A background piece?

18 I knew inevitably, as things
19 unfolded from July 1 on that information had
20 been gathered. As I've said, I don't know
21 how, or when or where, other than what was in
22 multiple reports about this.

23 A background report like this,
24 essentially a primer, no.

25 This is the first I've seen this.

1 MR. TEITELBAUM: You didn't hear
2 prior to July 1st that Dopp was in the
3 process of preparing, or had prepared a
4 background piece?

5 THE WITNESS: He was gathering
6 the information.

7 Again, to go back to my testimony
8 to the DA, where I was asked, "Did you direct
9 the collection of documents?" And I said no.

10 Obviously, I knew there were
11 documents being collected. Did I direct
12 their release? No. I knew that there was
13 going to be a release.

14 Did I know he was doing something
15 like this that was sort of an explanatory
16 piece? No.

17 It would make sense that he
18 would. If he's trying to say to a reporter,
19 this is what communication directors do.
20 They say here is why this is important, here
21 is what this shows, here is why your article
22 should make this point and that point.

23 So it doesn't surprise me that he
24 would do it, and I did not know that he was
25 doing it.

1 MR. TEITELBAUM: You're referring
2 to 67?

3 THE WITNESS: That's correct.

4 MR. TEITELBAUM: When did you
5 first learn that Darren Dopp was gathering
6 documents concerning Senator Bruno's use of
7 the State aircraft?

8 THE WITNESS: I have no idea.

9 MR. TEITELBAUM: When is the
10 first time that you learned about it?

11 THE WITNESS: It must have
12 been -- not it must have been -- it certainly
13 could have been sometime after the early May
14 conversation where there were media
15 inquiries.

16 There was a media inquiry about
17 stuff, somebody is going to gather
18 information to respond to it.

19 So that is when it would have
20 been almost necessary, a logical conclusion
21 that information was going to be compiled
22 relating to me, relating to whoever was using
23 the plane.

24 Now, as I said, I didn't see it,
25 or look at it maybe to the end of June. But

1 necessarily ly it was being aggregated for
2 the press to respond.

3 MR. TEITELBAUM: And if you were
4 gathering documents, starting in the mid-May
5 period, your testimony is that you didn't
6 know where he was getting the documents from?

7 THE WITNESS: Correct.

8 I had no reason to ask or care.

9 If he was gathering documents
10 about my use of the plane, Joe's use of the
11 plane, whatever.

12 Q I'm showing you what has been
13 marked as Commission's Exhibit 176.

14 (Witness reviewing document.)

15 A Okay.

16 Q And I ask you if you can identify
17 this document.

18 A No.

19 I'm comparing it to 67. It seems
20 to be similar.

21 Q It's quite similar, except the
22 first line of the document is "overview."

23 A Correct.

24 Q As opposed to "for background
25 only."

1 A They are very similar documents,
2 but I have not seen it until this morning.

3 Q And did you become aware at any
4 point of anyone in the chamber creating what
5 I'll call an overview document of the
6 information on Senator Bruno, and the use of
7 the plane?

8 A No. If you're referring to this,
9 no. These two documents, as I've said, I
10 have not seen them before.

11 Q But were you aware that they
12 existed?

13 A No. I was aware that the
14 documents had been turned over pursuant to
15 the FOIL.

16 But as I said earlier, I have not
17 seen them.

18 And the creation of this is
19 something I was not aware of.

20 But it's something that a press
21 officer would do to try to push a story.

22 Q And is it something that would
23 also be done to turn a matter over to an
24 investigatory entity, like the IG or the AG?

25 A I suppose it could be.

1 But are you asking as a matter of
2 ordinary course would something like this be
3 produced?

4 Q Correct.

5 A I have no idea. I have not been
6 involved in ever turning anything over to the
7 IG, so I don't know what form, if there is
8 one, that would take.

9 Q In the course of the follow-up to
10 the July 1 article, were you aware of any
11 document being created in the Executive
12 Chamber to provide to either the IG or the AG
13 as an overview document from the chamber?

14 A No. I knew that they were asked
15 to inquire about several issues that had
16 arisen post July 1, but I was not aware that
17 an overview document was created for their
18 benefit.

19 MR. TEITELBAUM: "They" being the
20 IG, AG?

21 THE WITNESS: That's correct. Or
22 whoever else along the way.

23 MS. TOOHER: We'll break now for
24 lunch.

25 (Luncheon recess had.)

1 CONTINUED DIRECT EXAMINATION

2 BY MS. TOOHER:

3 Q Going back to the July 1st
4 article as a time reference.

5 A Sure.

6 Q Prior to that article, had you
7 had any conversations with anyone on your
8 staff concerning the collection of documents
9 from the State Police?

10 A No. I have no recollection of
11 any conversations about what was turned over,
12 or how anything relating to that issue was
13 collected from whom, or by whom.

14 Q And did you have any
15 conversations after the article came out as
16 to where these documents were obtained?

17 A Not until it became an issue in
18 the media.

19 In other words, there was a point
20 which we can find it in the articles when the
21 question was raised about the methodology.

22 And at that point, inevitably,
23 the question was how was this stuff done
24 prior to that note.

25 Q Preston Felton was the acting

1 Superintendent of the State Police during
2 your administration; is that correct?

3 A That's correct.

4 Q And what was your relationship
5 with Superintendent Felton?

6 A It was very good, cordial
7 relationship.

8 I had selected him to be the
9 acting Superintendent, subject to Senate
10 confirmation, and spoke to him at ceremonial
11 events, State Police graduations, funerals.

12 And when there was a crisis, akin
13 to what I said about Bill Howard, when there
14 were events such as what happened in
15 Margaretville, or shootings, et cetera. But
16 rarely other than that.

17 Q Did you, prior to July 1, again,
18 ever have any conversations with
19 Superintendent Felton concerning Joe Bruno?

20 A No.

21 I'm hesitating only because
22 certainly not with respect to this issue.
23 Did Joe Bruno's name come up in the context,
24 you need to be confirmed by the Senate.

25 It may not be a bad idea if you

1 reached out to the Senate in that context
2 totally unrelated to this, perhaps.

3 But as it related to this, the
4 answer is no.

5 Q Were you aware of anyone in the
6 Executive Chamber having conversations with
7 Superintendent Felton concerning Joe Bruno's
8 travel?

9 MS. HIRSHMAN: What time frame?

10 Q Prior to July 1.

11 A No.

12 Q And were you aware of anyone in
13 the chamber having conversations with anyone
14 at the State Police concerning Senator
15 Bruno's travel prior to July 1?

16 A No.

17 Again, I'm trying to be very
18 careful.

19 There inevitably was interaction
20 between Marlene and the State Police as it
21 related to the ordinary course of approving
22 his use of the chopper, or the fixed plane,
23 which is on the theory that she would call
24 and say, are they available, it's the
25 weather, rudimentary conversations like that.

1 As related to collection of
2 documents pertaining to this issue, I'm not
3 aware of any such conversation.

4 Q And are you aware of any
5 conversations between anyone in the chamber
6 and Bill Howard concerning the collection of
7 documents from the State Police?

8 A I have a sense that I knew that
9 Darren and Bill somehow were -- obviously, I
10 knew that Darren was the one who received the
11 media inquiry.

12 I have a sense that I knew that
13 Bill had somehow been involved in this issue
14 in some way, shape or form.

15 But as I said earlier, I did not
16 talk to Bill about it, and I don't know if
17 anybody else did.

18 But I knew Bill was involved in
19 some way, shape or form.

20 Q And when you say you had a sense,
21 what do you mean by that?

22 A I have a sense that I remember
23 it. I don't know if it was from Darren or
24 from somebody else, I just don't know.

25 Q Would it be fair to say you had

1 an understanding of some sort concerning
2 Darren getting the records from Bill Howard?

3 A Honestly, that goes beyond what
4 I'm trying to suggest.

5 Q Okay.

6 A I don't know if he got the
7 records from -- as we sit here today, I don't
8 know if he got the records from Bill Howard,
9 I don't know if he got them from the State
10 Police, I don't know where he got them.

11 So what I knew was that there was
12 some nexus because of Bill Howard's
13 relationship with the State Police.

14 Q Prior to July 1, were you aware
15 of any communication taking place between
16 Preston Felton, Bill Howard and Darren Dopp
17 concerning the records of Senator Bruno's
18 travel?

19 A No.

20 Q Were you aware that there were
21 e-mail communications between Superintendent
22 Felton and Bill Howard?

23 A No.

24 Q Were you aware that there were
25 e-mail communications between Superintendent

1 Felton through Howard to Darren Dopp?

2 A No.

3 MS. HIRSHMAN: What does that
4 mean, communications?

5 MS. TOOHER: Concerning --

6 MS. HIRSHMAN: Through Howard toe
7 Darren Dopp, what do you mean?

8 MS. TOOHER: That there were
9 e-mail communications.

10 MS. HIRSHMAN: So you're not
11 trying to suggest that there were direct
12 communications between Dopp and Felton?

13 MS. TOOHER: Correct.

14 MS. HIRSHMAN: Okay. I'm sorry
15 to interrupt. I just wanted to clarify.

16 MS. TOOHER: That's okay.

17 MR. TEITELBAUM: When you say
18 that you have a memory of knowing before July
19 1st that Dopp and Howard were in
20 communication with one another, was it a
21 communication concerning --

22 MS. HIRSHMAN: It's a little
23 strong.

24 MR. TEITELBAUM: Let me finish my
25 question, and then we'll let the witness

1 answer it.

2 If it's too strong, I'm sure
3 he'll know how to tell me about it.

4 Concerning communications with
5 the State Police.

6 And if my characterization of
7 your testimony is too strong, you'll tell me.

8 THE WITNESS: Well, I don't
9 want -- I'm trying to be very careful so as
10 not to suggest that I had not the slightest
11 idea that Howard might be involved, and maybe
12 that Darren mentioned Bill Howard's name at
13 some point in the context of one of these two
14 conversations that I recall, the May and the
15 end of June.

16 That is why I have some
17 recollection that Bill would have been
18 involved.

19 Preston Felton, not at all.

20 Communications, what Bill was
21 doing, I do not know.

22 I don't know if that answers your
23 question.

24 MR. TEITELBAUM: So either in the
25 mid-May conversation or the end of June

1 conversation, your recollection is that
2 Howard's name came up?

3 THE WITNESS: I don't believe it
4 was the end of June.

5 I don't recall his name coming up
6 in mid-May. It may have been at the very
7 initial conversation in terms of the media
8 inquiry.

9 Remember, the whole predicate for
10 this is the media appears in early May, says
11 we want all this stuff about a bunch of you
12 guys.

13 MR. TEITELBAUM: Yes.

14 THE WITNESS: At some point I had
15 a sense, maybe it was just something that I
16 heard, that Bill was the one who dealt with
17 the SP.

18 MR. TEITELBAUM: Did your
19 inference also contain that the communication
20 between Dopp and Howard had something to do
21 with Senator Bruno's use of the aircraft?

22 THE WITNESS: It was the issue of
23 the use of the aircraft. I didn't know, and
24 don't know today, other than what I've read
25 in the reports, what Bill Howard did or

1 didn't do.

2 MR. TEITELBAUM: Okay.

3 Q Prior to July 1st, did you have
4 any conversations with Dan Wiese concerning
5 Senator Bruno?

6 A Ever?

7 Q During your administration.

8 A Yes. Just so it's clear, I
9 worked with Dan Wiese starting in 1988, from
10 '88 to '92. So I've known him for many
11 years.

12 I knew him through my years as
13 Attorney General. He was the individual who
14 was in charge of executive security, hence
15 Governor Pataki's security.

16 So I spoke to Dan every -- two
17 or three times a year.

18 Did Senator Bruno's name come up?
19 Never.

20 Q Did you have a substantive
21 conversation concerning Senator Bruno with
22 Dan Wiese prior to July?

23 A About Senator Bruno's use of --

24 Q About Senator Bruno, more than
25 just a passing conversation? Was there a

1 substantive contact with Dan Wiese concerning
2 that?

3 A He may have made some reference
4 to the fact that Governor Pataki and Senator
5 Bruno hated each other.

6 Q Was there any discussion
7 concerning Senator Bruno's activities while
8 he was in New York with Dan Wiese?

9 A I don't believe that issue came
10 up.

11 Let me restate.

12 There was a point in time, and
13 I'm not sure if it was before July 1 or after
14 July 1, when Dan Wiese said to me, Joe Bruno,
15 and the SP, and Governor Pataki's office had
16 a problem about his use of the SP to move
17 around.

18 And that is when I first heard
19 about the whole issue relating to Mike Long.

20 I do not know when that
21 conversation occurred. I don't know if it
22 was before the article or shortly after the
23 article.

24 But that was the first time I had
25 heard about that situation, whatever one

1 wants to call it.

2 Q And what was your understanding
3 as to what that situation was?

4 A That there had been complaints,
5 perhaps overstates it, but, a better word --
6 a complaint raised by either Mike Long or his
7 daughter about Joe Bruno's use of the State
8 Police to go to an event that I believe Mike
9 Long hosted as a fund-raiser for Joe Bruno.
10 And there was some issue about people
11 thinking that Joe Bruno was showing up with
12 security or bodyguards.

13 It was unclear.

14 But Dan mentioned that this had
15 become an issue, and had percolated up inside
16 the SP and the Pataki administration.

17 And that's the totality of my
18 knowledge of it.

19 Q And did he volunteer this
20 information, or was it in response to an
21 inquiry?

22 A He raised it with him.

23 But an inquiry from whom?

24 From me to him? No. I don't
25 know if there was another inquiry, not to

1 him, but an inquiry generally. It was not an
2 inquiry from me to Dan.

3 Q Was he in communication with
4 other members of the Executive Chamber, Dan
5 Wiese?

6 A I doubt it.

7 MS. HIRSHMAN: What time period?

8 Q Prior to July 1, during your
9 administration.

10 A I doubt it. I had worked with
11 Dan, from, as I said when I was in the DA's
12 office. So we had a friendship.

13 And he was the person who
14 occasionally, if I needed to reach Governor
15 Pataki quickly, when I was Attorney General,
16 I would, and did not want ordinary
17 communications to be seen, I would do it
18 through Dan.

19 Q And were there any conversations
20 that you had with Dan Wiese concerning
21 Senator Bruno after July 1?

22 A This conversation may have been
23 before July 1, it may have been after July 1.

24 Which side of that date line it
25 is, I don't know.

1 Other than this conversation, the
2 answer is yes, one conversation which related
3 to this.

4 There was a New York Times
5 article about that complaint. There had been
6 back and forth in the New York Post about
7 Mike Long, and whether or not there had been
8 a complaint raised about Joe Bruno's use of
9 the SP.

10 The New York Times was going to
11 write an article about it, or somehow they
12 got interested in the issue, and I asked Dan,
13 we knew the Times was trying to ferret out
14 whether or not that story was accurate.

15 I asked Dan if he would talk to
16 the New York Times. I did not talk directly
17 to Dan, but I had somebody -- actually, I'm
18 not sure, I may have, I don't recall whether
19 I spoke to him, or Christine Anderson spoke
20 to him, whether he would speak to Danny
21 Hakim, at the New York Times, to validate
22 that story about a complaint having been
23 raised about Joe Bruno's use of the SP.

24 But somehow, the genesis of this
25 entire issue was being challenged, and

1 consequently -- at which this first had
2 become an issue within the executive at the
3 SP was material.

4 Do you follow that?

5 Q I think so.

6 Were you aware of Dan Wiese's
7 connection with Troop New York City during
8 this time frame in your administration?

9 A What is that? I don't understand
10 the question.

11 Q Were you aware of a relationship
12 between Dan Wiese and members of Troop New
13 York City of the State Police, during the
14 time frame of your administration?

15 A No. I don't understand the
16 question.

17 He's not in the SP anymore, so I
18 don't know what relationship he has, if any.

19 Q Were you aware of him
20 communicating with Troop New York City during
21 that time frame?

22 A No.

23 Q Before moving away from the
24 production of documents, or the issue of
25 documents, and the turnover to the Times

1 Union, during your interview with the
2 District Attorney's Office, you were asked --
3 the Albany County District Attorney's
4 office -- you were asked fairly specifically
5 concerning your participation in terms of the
6 release of documents to the Times Union.

7 Do you recall those questions?

8 A I do.

9 Q And in the DA's report, at page
10 17, Commission's 175, you were specifically
11 asked, did you direct the gathering of any
12 documents concerning Senator Bruno's use of
13 state transportation at any time.

14 And your response was no.

15 A Correct.

16 Q And your response is the same
17 today; is that correct?

18 A That is correct.

19 Q And you were further asked, did
20 you direct the release of any documents at
21 any time to the media concerning Senator
22 Bruno's use of state transportation. And
23 your answer again is no.

24 And it goes on fairly
25 extensively. I'm going to encapsulate that

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1 by saying other than to respond to the media
2 request. And that is your response today?

3 A That is correct.

4 And I know they view this as
5 attention, but with Mr. Dopp's statement, but
6 I am very clear that the word "direct" means
7 to initiate, command, instruct somebody, pick
8 up the phone and say, "I want you to do
9 this," rather than his coming in and saying,
10 "We have a media request, should wait," to
11 which my response was the media request, what
12 choice do we have, which is to more
13 acquiesce, permit, or say, do what we always
14 do about media requests, which is precisely
15 why the gathering of documents, as well,
16 where clearly I knew the documents were being
17 gathered, I didn't direct it.

18 So my answer is yes, I did not
19 direct either collection or release. It was
20 something that happened in the course of
21 responding to the media in the ordinary
22 course of events subsequent to my late June
23 conversation with him, where he said, "You're
24 getting this media request.

25 Q When did you become aware that

1 Darren Dopp was gathering information in
2 response to the media request?

3 A I think you asked this earlier,
4 and I think I gave the same answer then which
5 I'm about to give now, which is, in May, when
6 the initial inquiry was raised, inevitably,
7 you're going to start gathering information,
8 how, when, where, from whom, I didn't know, I
9 don't know, and frankly, didn't care.

10 And I would hope that the
11 Governor would not waste his or her time
12 paying attention to that.

13 There was a media person who was
14 going to gather information, so I must have
15 known as of May as it relates to these
16 inquiries.

17 And since there had been
18 inquiries throughout the year, it was one of
19 those issues where they're always going to be
20 gathering the documents.

21 Q So would it be fair to say that
22 it was your understanding, following the May
23 meeting, that Darren Dopp would be gathering
24 information?

25 A I'm distinguishing between the

1 very first May conversation where there was
2 an inquiry.

3 Q Yes.

4 A That after that inquiry, yes, if
5 there's an inquiry, we're going to respond to
6 it.

7 After the May, mid-May, May 17,
8 18, 19, whatever date, I don't know what it
9 was, I don't know what he's doing because at
10 that point I have said, you know, who cares,
11 this is silly.

12 And so, I don't know if there is
13 a stop to this process or not. I don't pay
14 attention to it.

15 Come the end of June, when Darren
16 comes back and says, the inquiries are here,
17 we're getting a FOIL, obviously, when I hear
18 that, I presume he has gathered, or is
19 gathering, or has gathered documents.

20 MR. TEITELBAUM: In the 175 --

21 THE WITNESS: I'm sorry, 175 is
22 the DA report?

23 MR. TEITELBAUM: Yes.

24 In the back and forth between you
25 and Dopp, as reported in 175 -- let me

1 characterize it this way. There's a kind of
2 passionate response that's alleged in this
3 report by Dopp.

4 THE WITNESS: Right.

5 MR. TEITELBAUM: Did that happen?

6 THE WITNESS: To the best of my
7 recollection, it did not.

8 Just so it's clear, I, in my
9 private conversations, do not always use the
10 Queen's English. And I make no bones about
11 that.

12 In my public commentary, I think
13 you will see, if you do a complete search of
14 the entirety of my public comments as
15 Governor, you would not see me say anything
16 critical, vulgar, of Senator Bruno.

17 In my private conversations,
18 occasionally I was, to use your word,
19 passionate.

20 And that is my nature, and the
21 nature of politics.

22 I do not in this conversation
23 recall that, because this was not an issue
24 about which I was passionate then, or now, or
25 at any point in time.

1 There were other issues about
2 which I was, but this was not one of them.

3 MR. TEITELBAUM: That's what I'm
4 trying to get at.

5 The conversation that you had
6 with Dopp at this time, as you seem to be
7 characterizing it, it was kind of a very
8 brief conversation.

9 THE WITNESS: Right.

10 MR. TEITELBAUM: It was less than
11 thirty seconds.

12 THE WITNESS: Yes. I think I
13 said less.

14 MR. TEITELBAUM: Thirty seconds
15 or less.

16 THE WITNESS: Yes.

17 MR. TEITELBAUM: And it sounds to
18 me, as you testified, he was reporting
19 something to you concerning a FOIL request.

20 And your testimony is you didn't
21 direct him. Your testimony is you just
22 acknowledged that there's a FOIL request, do
23 what you have to do.

24 THE WITNESS: This is an issue
25 which is going to emerge -- in May I said, I

1 said repeatedly, who cares, it's not
2 material, it's not an area of great
3 vulnerability for anybody, it's going to
4 disturb our effort to get work done.

5 Getting work done was no longer
6 an issue, the session was over, so who cares
7 if it comes out now, you got a FOIL request.

8 Now, on other issues, yes, I was
9 passionate in my response about Senator
10 Bruno.

11 MR. TEITELBAUM: The focus of my
12 question is not colorful language that is
13 alleged to have been used. The focus of my
14 question is that the way in which Dopp
15 apparently characterized the conversation as
16 reflected in 175 is at variance, it appears,
17 as to how you are characterizing it.

18 THE WITNESS: We are now --
19 you're asking me under oath to characterize a
20 DA's report which characterizes something.

21 MR. TEITELBAUM: No.

22 THE WITNESS: Certainly there's a
23 different tenor if one accepts his recitation
24 of my commentary.

25 That recitation would be more

1 appropriate about other conversations I had
2 about Senator Bruno, where he had acted, and
3 he was publicly critical of my wife.

4 As one of the e-mails you showed
5 me earlier said I want to punch back when he
6 was publicly critical of my wife. I was
7 upset about that.

8 When he was using invective to
9 describe me, as he often did on air, and in
10 print. I was upset.

11 I did not think that was the
12 appropriate way to deal publicly.

13 And indeed, publicly, I never did
14 comment about him that way.

15 In private, as a consequence, I
16 did, as one might say, vent. I never
17 expected those private conversations would
18 become the subject of multiple public
19 reports. I thought an executive's private
20 conversations with senior staff might, in
21 fact, remain private.

22 But I never said anything
23 publicly critical of him in that regard, and
24 do not remember this conversation as one
25 where the emotion was more -- because this

1 was not an issue about which I felt that
2 passionate.

3 Q You had testified earlier a bit
4 about conversations that are relayed again in
5 the DA's report, Commission's 175, with
6 Darren Dopp following the turnover of
7 documents on or about June 28th, and prior to
8 the article, July 1.

9 Were you calling Darren Dopp on a
10 daily basis, inquiring about the article
11 during that time frame?

12 A No. I do not have any
13 recollection of calling him about this
14 article.

15 Was I calling Darren daily?
16 Probably.

17 Because the routine was that I
18 would call him mornings, to say what's in the
19 paper, or if I had already seen it, to
20 discuss what was in the paper, why.

21 That was sort of a morning
22 briefing that I would have with Darren.

23 And I would call Rich for other
24 issues. And I would call Dave Nocenti for
25 other issues.

1 This was sort of communication
2 gathering in the morning.

3 But about this issue, I do not
4 recall that.

5 I do not believe, again, that it
6 was essential to what I cared about.

7 Q So you would not characterize the
8 issue of the Albany Times Union article that
9 comes out on July 1st as a priority issue for
10 you prior to the issuance of that article?

11 A That's correct.

12 I'm just curious, the e-mail on
13 page 17 of your Exhibit 175, the middle of
14 page 17, what is the e-mail from which that
15 is extracted? Do we have that?

16 Q No.

17 A I'm just curious. It doesn't
18 matter.

19 Q Talk to the DA about that one.

20 A Okay.

21 Q We may get to that.

22 The article comes out on July 1,
23 and gets a fair amount of attention, both in
24 the media, and from your office.

25 Did you participate initially --

1 I'm talking now the July 1, July 2, time
2 frame, in discussions concerning a response
3 from the chamber to what was alleged in the
4 July 1 article?

5 A Participate, yes.

6 There were -- July 1 was, again,
7 a Sunday?

8 Q Yes.

9 A July 1 was the Sunday.

10 That next day, I believe -- I'll
11 have to check the schedules -- I believe that
12 was the day I went down to New York City, to
13 tape something with New York One with
14 Dominick Carter. Am I right?

15 And then had a meeting with the
16 New York Times editorial board.

17 So it was inevitable that that
18 issue was going to arise.

19 So I needed to think through what
20 the response should be, both for TV, for the
21 editorial board.

22 There was also the separate issue
23 of whether it should be -- this is the issue
24 that percolated and bounced around in
25 e-mails, that others had much greater

1 conversation, I was on some of them. Whether
2 it should be referred or not, and if so, to
3 whom.

4 Q And what were the substance of
5 those conversations concerning the referral
6 issue?

7 A I'm not sure that I was involved
8 beyond the e-mails themselves on the Sunday,
9 because I was at the farm, and I was copied
10 on a few of the e-mails.

11 I think the question was would
12 anybody have jurisdiction, does this rise to
13 the level of something that should be sent.

14 You always, inevitably, when
15 there's an article alleging impropriety, the
16 question we are going to receive is, have you
17 done something about it.

18 And either you refer to somebody,
19 you say we're leaving it alone.

20 You need to figure out what to
21 say in response.

22 And I think that was the tenor of
23 the conversation to whom, if anybody, why,
24 what's the logic, what do you do.

25 Q And what was the logic?

1 A My thinking was, if there is
2 something wrong here, who, if anybody, should
3 take a look at it.

4 I don't think it's -- I didn't
5 know who had jurisdiction.

6 So is there somebody who should
7 look at whether this issue needs to be
8 pursued.

9 Q And who are you talking to at
10 this time?

11 A Again, I'm saying this without a
12 specific recollection, but I can only imagine
13 that the participants would have been David
14 Nocenti -- at most, I'm giving you the large
15 universe. I don't remember specific
16 conversations.

17 David Nocenti, Darren is going to
18 have to deal with the press; Rich, who I
19 think was in Florida at the time, so I'm not
20 sure if we were talking telephonically or on
21 e-mail.

22 I don't remember anybody else
23 being involved. I don't remember them
24 specifically being involved, but that would
25 have been the ordinary course on an issue

1 like this.

2 Q And do you remember, in sum and
3 substance what the conversations were, as far
4 as referral?

5 A No.

6 And, in fact, I don't know what
7 the conclusion was, if there was one. I
8 think there were e-mails.

9 There was a public statement at
10 some point, but I don't know if it was to the
11 IG, the DA.

12 I think there was some question
13 whether the DA asked for it, whether the DA
14 didn't ask for it, when.

15 Q Did you participate in the
16 decision as to who this should be referred
17 to?

18 A Participate would be splicing it
19 too finely.

20 If I was involved, I
21 participated, and I was the Governor, so what
22 I indicated would have happened, I think what
23 I did was indicate that they should figure it
24 out. I don't think I had a view, whether it
25 was an IG issue, a DA issue, an AG issue, I

1 just did not know what, if anything, had
2 occurred that was wrong.

3 Remember, go back to my initial
4 premise, I don't think any of this violates
5 the law, anyway.

6 There was commentary back and
7 forth on that.

8 But I think it ended up going to
9 the DA, and somehow the AG's office got
10 involved, I think the IG later, when the
11 whole thing exploded.

12 MR. TEITELBAUM: Did you
13 participate in the decision to refer it, who
14 to refer it?

15 THE WITNESS: My recollection is
16 that I said to them, "You guys figure it
17 out."

18 And this isn't a body in the
19 street, this is using the State plane in a
20 context where I begin with the premise, okay
21 maybe it's not right, maybe it's not good,
22 maybe the rule should be changed, but not, in
23 my view, violative of what the laws have been
24 articulated to be, necessarily.

25 And so I'm not big on the idea

1 that somebody should be investigated for
2 something where it's not clear, in my
3 understanding of the law, they had done
4 anything wrong.

5 But I said, "All right, you guys
6 figure it out."

7 And at the end of the day, I
8 think the DA either expressed interest,
9 denied expressing interest, I don't know how
10 that happened.

11 Was I involved? I was a
12 participant in some way, shape or form in
13 those conversations.

14 MR. TEITELBAUM: When you say,
15 "You guys figure it out," are we to infer
16 from that that, in effect, you are letting
17 your staff make the decision --

18 THE WITNESS: Yes.

19 MR. TEITELBAUM: -- without your
20 approval one way or the other?

21 THE WITNESS: It was essentially
22 who, if anybody, would have jurisdiction over
23 this, and rightly should look at it.

24 It's an IG issue in terms of just
25 rules violated. Is it a DA issue in terms of

1 the criminal jurisdiction.

2 And at some point, David Nocenti
3 sent me an e-mail in which he laid out who or
4 who does not have jurisdiction.

5 MR. TEITELBAUM: I'm not focusing
6 now on the issue of to whom to refer it, I'm
7 asking whether the issue to refer it to
8 anybody, did you defer to your staff on that
9 and say, "Well, you know, you guys figure it
10 out, if you want to refer it out, you do, if
11 you don't you don't?"

12 THE WITNESS: The predicate
13 question is, do you defer it at all. That
14 depends on the jurisdiction. Does the IG
15 have jurisdiction, that doesn't presume
16 criminal conduct.

17 I don't remember what the syntax
18 was on that Sunday the first.

19 I remember more the e-mails that
20 you showed me that I was more specifically
21 involved figuring out how to respond on
22 Monday to the Times board and to New York
23 One.

24 MR. TEITELBAUM: Did you ever
25 learn who made the decision to refer it out

1 to a law enforcement authority?

2 THE WITNESS: I'm not sure it's
3 clear.

4 By that I mean -- I don't believe
5 I said, "Refer it to." I'm quite sure I did
6 not say, "Do this."

7 I think there's some -- I hate to
8 speculate --

9 MS. HIRSHMAN: Then don't.

10 THE WITNESS: I don't know. I
11 don't know who did it.

12 MR. TEITELBAUM: But your
13 testimony is that you didn't?

14 THE WITNESS: I don't believe
15 that I said, "Refer it to the DA, IG, AG,
16 Southern District."

17 MR. TEITELBAUM: Or to refer it.

18 THE WITNESS: Or to refer it at
19 all.

20 I remember there were
21 conversations, it was Sunday. I don't
22 remember ever getting closure on that
23 decision.

24 MR. TEITELBAUM: And you learned
25 eventually that it had been deferred out?

1 THE WITNESS: Correct. Although
2 I also believe that the record shows there is
3 some ambiguity about whether it was a
4 referral or a request.

5 Again, I don't know the backdrop
6 to that, either.

7 But there's ambiguity about that.

8 MR. TEITELBAUM: When you learned
9 that law enforcement authorities commenced
10 investigating Senator Bruno's use of the
11 State aircraft, did you also learn that there
12 were conversations with members of your staff
13 that prompted a decision to investigate?

14 THE WITNESS: I'm unclear.
15 Conversations internal to my
16 staff?

17 MR. TEITELBAUM: No, with members
18 of your staff.

19 THE WITNESS: Between members of
20 my staff and the DA's office?

21 MR. TEITELBAUM: Any law
22 enforcement authority, the DA's office.

23 THE WITNESS: At a certain point
24 in time, I remember, yes, there were
25 conversations between the DA's office and

1 members of my staff, yes.

2 MR. TEITELBAUM: When did you
3 find that out?

4 THE WITNESS: That I don't know.
5 I don't know if it was the 1st, 2nd, 3rd.
6 That I don't know.

7 I know that there were, as would
8 almost necessarily be the case where a
9 referral is made, there's going to be a
10 conversation in which somebody says, "This is
11 what this relates to. Are you interested?"

12 In the ordinary course of any
13 referral is you that you don't refer
14 something over without giving somebody a
15 heads up, partly as a courtesy.

16 Somebody will pick up the phone
17 and say, "You may have seen this article, or
18 you may not. Here are the facts." It may
19 not be in the public issue.

20 "Here are the facts, do you want
21 this to refer to?"

22 Sometimes an office will say yes,
23 sometimes they will say no.

24 So there is, almost as a matter
25 of propriety, a conversation between the

1 executive and the DA, or whomever.

2 MS. TOOHER: Will you mark this
3 as Commission's Exhibit No. 177.

4 (Document marked Commission's
5 Exhibit 177.)

6 MS. TOOHER: Will you mark this
7 as Commission's Exhibit 178.

8 (Document marked Commission's
9 Exhibit 178.)

10 MR. TEITELBAUM: Now the
11 Executive Chairman had oversight
12 responsibilities with respect to the use of
13 the State aircraft, correct?

14 THE WITNESS: Right.

15 MR. TEITELBAUM: After the July
16 1st article came out, did you participate in,
17 or are you aware of any conversation in which
18 there was a suggestion that the Executive
19 Chairman inquire of Senator Bruno as to the
20 purposes for which he was using the State
21 aircraft?

22 THE WITNESS: After July 1?

23 MR. TEITELBAUM: Correct.

24 THE WITNESS: Inquire
25 retrospectively? In other words, go back to

1 prior uses of the plane, and say, "Why did
2 you use it on May 1, May 10 and May 15?"

3 Or prospectively, if he was
4 intending to ask permission to use the plane
5 on July 10, we would conduct a further
6 inquiry?

7 MR. TEITELBAUM: Retrospectively,
8 before the matter was the subject of
9 conversation between Executive Chamber
10 personnel and law enforcement authorities.

11 THE WITNESS: I'm not aware of
12 any discussion about whether we should go to
13 Senator Bruno's office and ask him for that,
14 no.

15 Q At any time, or after July 1?

16 A Frankly, at any time.

17 I'm not aware at any time in this
18 process if there was conversation about that
19 matter.

20 MR. TEITELBAUM: Precisely what
21 was contained in the July 1st article that
22 raised the question on the part of anybody in
23 the Executive Chamber that there might be
24 criminal conduct here?

25 THE WITNESS: I'm not sure.

1 I can't answer for anybody else.

2 And that's why I've said numerous
3 times I wasn't sure why this whole issue was
4 of such interest, in the first place, because
5 going back to May, when the issue was
6 crystallized for the first time, and I said,
7 this isn't an issue.

8 The rules are such that there is
9 tremendous latitude, elasticity.

10 So I'm not sure why there is an
11 issue, in the first place.

12 Now, the article -- and I've read
13 it only once, last July 1st. I said I
14 couldn't care a whit about this, I generally
15 viewed it as I had more important things to
16 do.

17 The article would suggest that
18 the plane was used on days on which there was
19 exclusively political activity, in which
20 case, the certification arguably might have
21 been false.

22 Or the use of the plane could
23 have been viewed as a larceny in terms of the
24 value of the property, a misrepresentation, a
25 violation of the ethics rules, oral or not.

1 There could have been issues
2 relating to whether other meetings were added
3 pretextually in order to create an illusion
4 that there was a schedule, when, indeed, the
5 only use was political.

6 There are a raft of theories that
7 one could come up with.

8 MR. TEITELBAUM: What facts were
9 presented in the July 1st article, to your
10 knowledge, that changed the formulation that
11 you had in May that the Starr meeting, the
12 insurance meeting, the legislative business
13 could have been discussed at that meeting?
14 What was contained in the July 1st article
15 that changed your mind?

16 THE WITNESS: I'd have to reread
17 the article. Perhaps nothing.

18 I was the very first one who said
19 this isn't a big issue. If there's an
20 article of this sort, then there is a
21 question of what do you do.

22 And in the ordinary course, you
23 say, look, let somebody who has the
24 jurisdiction that subsumes this issue, strong
25 or weak, take a look at it, see if they want

1 to do it.

2 I was not exercised one way or
3 the other about referring it, because my view
4 of the law has been reasonably -- has been
5 constant throughout. The law should be
6 changed, but the law was what it was, and
7 therefore, not much to do.

8 There was no change in behavior
9 on my part.

10 Members of the office felt we
11 should suggest to somebody with jurisdiction
12 they look at it. Fine, let them look at it.
13 We are not going to cut off somebody's
14 capacity to look at it.

15 MR. TEITELBAUM: I think you said
16 that the predicate for whether or not
17 inappropriate, or perhaps illegal conduct,
18 had been committed was the precise purpose
19 for which the Senator was using the State
20 aircraft; is that correct?

21 THE WITNESS: Restate the
22 question.

23 MR. TEITELBAUM: In other words,
24 in order to know whether his use of the State
25 aircraft was proper, you have to know whether

1 he was doing legislative business.

2 THE WITNESS: Correct.

3 MR. TEITELBAUM: And the
4 Executive Chamber having jurisdiction over
5 the proper use of the aircraft --

6 THE WITNESS: Right.

7 MR. TEITELBAUM: -- could have
8 asked Senator Bruno before referring it
9 out --

10 THE WITNESS: We did.

11 MR. TEITELBAUM: -- as to the
12 precise purposes for which he was using the
13 aircraft.

14 THE WITNESS: No, wrong, wrong.
15 Flat out wrong.

16 That was the issue that was
17 framed in January of 2007, when I have since
18 learned throughout this that an effort the
19 was made, as you referred to, to find out
20 more.

21 I was not involved, but the
22 Senate, on behalf of the Legislature, I don't
23 know if on behalf of the Assembly, as well,
24 said we don't want to tell you, separation of
25 powers.

1 And so, the agreement was the
2 document that was created, which said
3 "governmental purpose," or words to that
4 effect.

5 Beyond that, the Senate did not
6 want us to inquire, and as a matter of
7 separation of powers, arguably they are
8 correct, even though the Governor
9 theoretically could have said, you don't have
10 access to the plane. I said I wouldn't do
11 that.

12 Therefore, in order to avoid that
13 separation of powers problem, in order to do
14 our best to ensure appropriate use of the
15 plane, we put in a certification when an
16 article arises, suggesting -- I haven't read
17 it recently -- suggesting exclusive use, use
18 of the plane for exclusively political
19 purposes.

20 The answer is not for us to
21 inquire in a context where separation of
22 power issues would be implicated, and we
23 argue we don't have to jurisdiction. But to
24 say who does, the IG, the AG, somebody else.
25 Give it to them.

1 I'm not the Attorney General
2 anymore. Move it to somebody else, I have
3 other things to worry about.

4 That was the rationale behind
5 where the boundary line was created.

6 My underlying lack of interest in
7 the issue, and a willingness to let somebody
8 else look at it.

9 Q I'm going to show you what has
10 been marked as Exhibit 177.

11 (Witness reviewing document.)

12 Q I ask you if you can identify
13 this document.

14 A Yes. This is, again, an e-mail
15 chain.

16 Interestingly, the times are a
17 little off. I'm sure you noticed that.

18 The clock seems to be bizarre in
19 this.

20 Q Did you have e-mail
21 communications with Darren Dopp concerning
22 the article coming out in the early hours of
23 July 1st?

24 A By "early," if you mean 6:22
25 a.m., no.

1 And if you look at the -- I
2 haven't seen paper yet. How does it look?
3 That's my typing.

4 If you read this, it says 3:21
5 a.m., Mountain Standard Time, no.

6 The 1st was a Sunday morning. I
7 would be shocked. The only reason I get up
8 that early Sunday morning is if the dogs are
9 barking and have to go out.

10 And I was not sending this e-mail
11 at 3:20 or 6:20 in the morning.

12 MS. HIRSHMAN: 3:20.

13 THE WITNESS: 3:20 is the first
14 one, Mountain Standard Time.

15 Q The first one appears to be from
16 Darren Dopp to you and Richard Baum.

17 A Yes. 3:19 a.m.

18 Q Correct.

19 A Which is something -- I have no
20 idea what that refers to about Uncle Charles.

21 Q And then your response at some
22 point thereafter, perhaps not 3:21 a.m.

23 A It certainly wasn't 3:21 a.m.,
24 no.

25 Q Was, "Hasn't seen the paper yet.

1 How does it look?"

2 A Right.

3 That was my response, but not at
4 3:21 in the morning.

5 Q And Mr. Dopp's response to you,
6 as at least indicated here, at 6:22 a.m.,
7 was, "Got to see to believe. I think we need
8 to move quickly to refer it to the proper
9 authorities."

10 A Right.

11 Q From this e-mail, it appears that
12 very early on and very quickly Darren, at
13 least, is interested in moving this out to
14 the proper authorities.

15 A Yes.

16 Q Did you discuss that with him,
17 initially with Darren Dopp?

18 A I just went through that.

19 I can't shed any more light on it
20 than I just did, saying over the course of
21 that day, inevitably there were e-mails back
22 and forth which have been produced, and some
23 conversations, some of which I may or may not
24 have been part of. I don't remember any.

25 The question, who should look at

1 this thing.

2 Q What was your response to the
3 Bruno article, your response, when you read
4 it?

5 A I'd have to see the rest of the
6 front page.

7 But I would ordinarily drive into
8 Stewart's, pick up a bunch of papers, Sunday
9 morning, whenever I got there, looked at it,
10 and said okay, fine.

11 This was not -- as the e-mails
12 reflect, okay, we're going to have a little
13 bit of a media pushback on this, but there is
14 nothing here that is fundamentally
15 problematic. He's got other problems,
16 arguably, that are deeper than this.

17 The airplane had been a media
18 favorite, because they love the notion that
19 we fly around in style at taxpayer expense.
20 It has never been an issue that struck me as
21 being important politically, legally. The
22 ethics of it should be dealt with.

23 Q I'm going to show you what has
24 been marked as Commission's Exhibit 178.

25 (Witness reviewing document.)

1 I ask you if you can identify
2 this document.

3 A Yes. It's an e-mail, a sequence
4 of two e-mails, one from -- there's three
5 e-mails.

6 Q It appears to be two in this
7 chain.

8 A Right.

9 Q Between you and Richard Baum?

10 A Correct.

11 Q Correct? And again, this is the
12 morning of July 1?

13 A Correct.

14 Q And there appear to be some
15 description of Bruno article by you. Bruno's
16 story is very bad for him, I think, really
17 puts him in a bad spot.

18 A Yes.

19 Q Can't believe it won't have some
20 legs.

21 A Yes.

22 Q What do you think?

23 When you say --

24 A I'm not sure if that's me.

25 I think that's Rich.

1 MS. HIRSHMAN: That's responding
2 to the e-mail sent by the Governor.

3 A Yes.

4 And, in fact my e-mail, to Rich,
5 in which I only type in the subject line,
6 which is my ordinary course, I said, "How do
7 you think the story came out?"

8 I was more interested in Nicholas
9 Confessore.

10 Q And Mr. Baum is obviously fairly
11 interested in the Bruno piece?

12 A Yes.

13 Q Again, did you have a response to
14 Mr. Baum's contacting you now on the Times
15 Union article?

16 A I have no idea.

17 Rich was in Florida at the time,
18 if my recollection is correct. So if we did,
19 it was probably an e-mail response, and you
20 will have it.

21 I don't remember. It doesn't
22 mean that we didn't have some telephone
23 conversations that day.

24 But he was in Florida on
25 vacation, so I was less likely to have

1 telephone calls with him.

2 Q There was a fair amount of e-mail
3 communication among senior members of your
4 administration in response to this article.

5 A Okay.

6 Q What is your recollection as to
7 the general tenor in the staff, in your
8 chamber, in response to this article?

9 A The media is going to ask us what
10 are doing, to whom are you referring this, if
11 anybody.

12 You've got to figure out a
13 response, and who is the right person to take
14 a look at this.

15 The way the article was framed,
16 even though, as we discussed, I don't see it
17 as an issue that makes out an offense
18 necessarily, although one can probe and find
19 other things out.

20 The media response is going to be
21 one of inquiry, and they're expecting us to
22 do something. And generating and figuring
23 out that proper response is what needed to be
24 done.

25 And that was what other people

1 were going to do. That's their job.

2 Q You mentioned a little earlier
3 the concept of larceny of property, and
4 Bruno's use of the plane.

5 A Right.

6 Q Were you aware that that subject
7 had been explored prior to turning these
8 documents over to the Times Union?

9 A Yes. I was aware of it from
10 1988.

11 And as I mentioned, I was a
12 prosecutor in the Orenstein case, when the
13 issue of what could or could not be done on
14 public payroll had captivated and dominated a
15 year of my life.

16 And that's why the various
17 larceny theories that could be conjured was
18 something I was aware of. I was, if not
19 individually skeptical of them, aware that
20 the courts were deeply skeptical of them.

21 And it's a theory, not one with
22 any judicial traction.

23 That's one of the theories,
24 that's the theory, the best we could come up
25 with, false filings and larcenies.

1 Q Were you aware that David Nocenti
2 and Darren Dopp had been communicating on
3 that subject prior to the turnover of
4 documents to the Times Union?

5 A No.

6 MR. TEITELBAUM: Is this the
7 first you're hearing about that?

8 THE WITNESS: About that
9 conversation?

10 MR. TEITELBAUM: Yes.

11 THE WITNESS: Unless it was in
12 one of the reports, and I read it, I'm not
13 aware.

14 I was not party to it. I know
15 there's the stuff about Peter saying he could
16 go on line with the IG website.

17 People had had various
18 conversations about what this might or might
19 not be.

20 I don't know specifically if I
21 was aware of that.

22 MR. TEITELBAUM: Do you know why
23 members of your staff would be communicating
24 about what possible crime might have been
25 committed by saying to Bruno prior to the

1 article coming out?

2 THE WITNESS: Do you want me to
3 speculate?

4 MR. TEITELBAUM: No.

5 THE WITNESS: Then, in which
6 case, I have no idea.

7 Q Were you aware that members of
8 your staff were communicating on what crime
9 could have been committed by Senator Bruno?

10 A No.

11 You would need to be a legal
12 scholar to figure out what the possibilities
13 are.

14 Q I want to show you what has been
15 marked as Commission's 125.

16 I ask you to take a look at the
17 document. There are a number of pages.

18 (Witness reviewing document.)

19 A Okay.

20 Q Have you seen this document
21 before?

22 A No, I'm not aware of it.

23 Q Did David Nocenti discuss with
24 you prior to the July 1 article that Darren
25 Dopp had been requesting information

1 concerning a scheme to defraud the
2 government?

3 A No, I don't believe he had.

4 It's interesting that this e-mail
5 chain begins with Darren to David saying he's
6 curious how this crime is defined.

7 When you said earlier that there
8 were people discussing it, it appears to have
9 been initiated by Darren.

10 What date was this?

11 Q Darren Dopp is the initial --

12 A On the 27th is the day the FOIL
13 was received.

14 Q Correct.

15 A Yes.

16 Speculating, it could be that
17 Odato said to him, "What is this?"

18 MR. TEITELBAUM: Odato hadn't got
19 it.

20 THE WITNESS: But the FOIL was
21 received on the 27th. Presumably, he is one
22 of the reporters who's been asking for it,
23 therefore, he's involved in back and forth
24 long before he gets the FOIL.

25 So presumably, he's saying to

1 Darren, "Okay, what is this?"

2 Does his article refer to any
3 potential criminal acts?

4 Q Yes, it does.

5 A Any particular crimes?

6 Q No.

7 A Presumably, then, he is saying,
8 "Okay, what is this?"

9 So he is saying to Darren, "What
10 crime might this be?"

11 And Darren's saying, "I got
12 lawyers. I'll find out."

13 Q Was that something that Darren
14 did for newspaper reporters?

15 A I have no idea.

16 His job -- the only thing I'll
17 say is that a Communication Director's job is
18 to help reporters understand the context, the
19 facts, to make a persuasive argument why to
20 write an article about how we've changed
21 health care finance, how we've changed
22 education funding, how we've changed state
23 ethics by drafting a new ethics law and
24 created this commission, or how we've shed
25 light on any one of a hundred issues.

1 And his job is to be responsive
2 to reporters, in providing them answers to
3 questions that they ask.

4 He's in the service business.

5 So if a reporter says to him,
6 "Does this constitute a crime," his job is to
7 try to answer that question.

8 And maybe he does it by saying to
9 Steve Krantz, or to David, or to whomever did
10 this, "What are the elements of this crime?
11 Help me out."

12 That's why he called it a favor.

13 That's the way a Communications
14 Director gets an article written.

15 I've said enough here negative
16 about reporters, they are lazy.

17 Q On the subject of reporters and
18 reactions, there was reactions in the press,
19 obviously, to the July 1 article.

20 There was also a response, or a
21 reaction, that characterized a number of the
22 activities going on in the Executive Chamber
23 as an effort to spy on Senator Bruno.

24 A Right.

25 Q I show you what has been marked

1 as Commission's Exhibit 53.

2 A Yes.

3 Q And ask you if you're familiar
4 with this document?

5 A Familiar with it?

6 Q Have you ever seen this? Take a
7 look at it.

8 A I've seen the headline.

9 Q Are you aware of the contents of
10 this article?

11 A No.

12 Q Are you aware that Fred Dicker
13 made allegations in the press that members of
14 the Executive Chamber had engaged in what I
15 believe I can quote him as saying spying on
16 Senator Bruno?

17 A I'm aware that he made those
18 allegations, yes.

19 Q And was there a response in the
20 Executive Chamber to those allegations?

21 A Sure there was.

22 I called various individuals and
23 said, "Is this true?" Because if it's true,
24 it's a problem.

25 And, in addition, I'm going to

1 be -- I see the press virtually daily,
2 although this is -- this article was dated
3 July 5th, and I'm not sure when I next saw
4 the press. It may not have been until the
5 8th; am I correct, that Monday?

6 July 4th I think was a Wednesday.

7 So there was sort of odd days
8 off. I was in Albany on the 6th.

9 I needed to make sure that when I
10 saw the press, and I was asked the question,
11 did the State Police spy on or do
12 surveillance on Joe Bruno, I needed an
13 answer, both as a matter of the underlying
14 substance, and the matter of being entirely
15 accurate in my response to the media.

16 So there, as you have no doubt
17 seen from the e-mail traffic, some statements
18 that were drafted, I wanted to get the answer
19 to that, and I inquired and got the answer,
20 which is that there had been no surveillance,
21 and that there was nothing asked of the SP,
22 as I was told then, as related to this, out
23 of the ordinary standard operating procedure,
24 which is what I said to the press on the 8th.

25 And in fact, I believe that every

1 report thereafter has validated that
2 statement.

3 Q And who did you go to to ask
4 those questions?

5 A Again, it would have been the
6 same, David Nocenti, Karen, Rich, when he got
7 back, that would have been the universe of
8 people most involved.

9 Q And what was Darren Dopp's
10 response?

11 A I am going to have a hard time
12 parsing one response, his versus David's
13 versus Richard's.

14 But the response that I was
15 given, and I think in this case everybody
16 agreed that there was no surveillance, there
17 was no accuracy or truth to anything that was
18 alleged here.

19 Q Okay. But Darren Dopp is your
20 communications guy, he's the one that
21 provided the information to the Times Union?

22 A Yes.

23 Q Perhaps not the exact words, but
24 what were your communications with him, in
25 particular, in sum and substance?

1 A I just gave it to you.

2 Q And you don't have any more
3 particular --

4 A I had said to all of them, "Is
5 this true?"

6 You have the statements that were
7 prepared, and you have the e-mails that went
8 back and forth on this, and you have, in
9 addition, the statement I made on the 8th,
10 when I was at the day care center, or
11 whatever, in Albany, where I was very
12 particular in my statement that it had been
13 reviewed by everybody, so I wanted to be
14 meticulous. There was no surveillance. This
15 was simply not true.

16 So it came to Dale Bolker's
17 self-grandizing comment that he's been the
18 subject of surveillance.

19 Q And you spoke a little earlier
20 about the Long incident.

21 A Correct.

22 Q And discussions with Dan Wiese,
23 of the State Police, concerning the Long
24 incident.

25 A Yes.

1 Q And Darren is quoted in the
2 article concerning the Long incident, as
3 well?

4 A Yes.

5 Q And I believe the quote was that
6 in response to that, in the second column,
7 recalling that incident, the (State Police
8 made some changes, and yes, keeping basic
9 records, i.e., logs).

10 MS. HIRSHMAN: Can you tell me
11 where you are.

12 MS. TOOHER: The second column,
13 one paragraph down.

14 MS. HIRSHMAN: Okay.

15 A Yes.

16 Q Did Darren Dopp ever discuss the
17 Long incident with you?

18 A I don't recall having a
19 conversation with Darren about it, other than
20 after some of this began to come out --
21 remember, I said I don't know when I had the
22 conversation with Dan Wiese, if it was before
23 July 1 or after July 1.

24 When Dan came to me and said,
25 yes, there had been an issue with Bruno,

1 Long, that whole set of circumstances, I
2 don't believe I relayed that to Darren, but
3 it lodged in my mind, and I'm not aware I did
4 anything about that until the day or two days
5 before the New York Times article on that
6 issue came out.

7 So you can check that date.

8 So, sometime in early, mid-July.

9 Q But at the time of this article,
10 which is July 5th -- and this is, I'm going
11 to say, a different tenor now being taken on
12 this story -- you had not discussed the
13 article?

14 A I don't know. I don't know when
15 Dan Wiese told me about that.

16 So I don't know how that relates
17 to this article and that sequence.

18 What I do know is that Dan had
19 recounted to me the complaint. I credited
20 what Dan told me. It's impossible for him to
21 have fabricated that.

22 And then I had him communicate
23 that to the New York Times later on.

24 Whether I had told Darren, or
25 Rich, or David about this, I don't know.

1 MR. TEITELBAUM: Putting aside
2 the issue of whether there was surveillance,
3 "surveillance" is a term of art for somebody
4 involved in law enforcement.

5 This headline in 53 uses the word
6 "track."

7 THE WITNESS: Yes.

8 MR. TEITELBAUM: Did you inquire
9 as to whether or not anybody in the Executive
10 Chamber was using the State Police to track?

11 THE WITNESS: Sure. That's what I
12 did.

13 And that's why my statement on
14 the 8th, which was the subsequent Monday, was
15 the State Police were not asked to do
16 anything, and did not do anything, other than
17 follow their standard operating procedure.

18 The State Police is the State
19 Police. We don't deal with them as it
20 relates to what they do in moving people
21 around.

22 MR. TEITELBAUM: So the answers
23 that you got back from your staff was that
24 there was no tracking being requested of the
25 State Police?

1 THE WITNESS: I did not use the
2 word "tracks."

3 If they're providing somebody --
4 when they move me around, they have logs that
5 are maintained, my itinerary, what logs they
6 keep in the standard, ordinary process of
7 maintaining their logs they keep.

8 What I was told is they did only
9 that which was their ordinary procedure in
10 moving Senator Bruno, just as they moved me,
11 just as they would move anybody else.

12 There was no deviation from their
13 standard process.

14 MR. TEITELBAUM: In terms of
15 record-keeping, and so forth?

16 THE WITNESS: Precisely.

17 MR. TEITELBAUM: Who told you
18 that?

19 THE WITNESS: That is the answer,
20 as I said, that was given to me based upon
21 conversations with -- and you can check the
22 e-mail traffic -- with Darren, with David,
23 with Rich. The entire -- Christine may have
24 gotten involved at that point; the press
25 office, because Darren was so much in the mix

1 as a participant.

2 I said, "Make sure this is
3 accurate."

4 When I go out on the 8th and make
5 a statement about this, we'd better be
6 accurate.

7 MR. TEITELBAUM: Are you unable
8 to pinpoint the person or persons -- we've
9 gotten four people. Did each one of them say
10 this to you?

11 THE WITNESS: Herb, I have no
12 idea.

13 When you're the Governor of the
14 state, and you ask a question, you expect to
15 get an answer. When I asked a question, I
16 expected everybody to get me the right
17 answer. And I didn't ask it of one person.
18 I said get me the answer, get it now, get it
19 right.

20 And that is the answer that I got
21 back on July the 8th, that's the answer I
22 gave.

23 As far as I know, as it relates
24 to surveillance there has never been anything
25 that suggested that it was not the right

1 answer.

2 MR. TEITELBAUM: And you got this
3 answer back from the people you just named?

4 THE WITNESS: I gave the
5 direction not as opposed to the collection of
6 documents, I gave a directive, get me the
7 answer, and I got an answer.

8 And I think that answer is
9 correct. According to the Attorney General,
10 the DA, the Inspector General, there was no
11 surveillance, a typical Fred Dicker article.

12 Q You have been provided a copy of
13 what has been marked as Commission's 56.

14 A Yes.

15 Q Can you identify this document?

16 A An e-mail.

17 Q This is an e-mail between you and
18 Rich Baum on July 6th; is that correct?

19 A Well, there are a couple of
20 e-mails.

21 The first one is from Rich to me
22 on the 6th. The second is from, I gather --
23 first from Rich to me. The second is from me
24 to Rich, in which I say -- a couple of
25 e-mails, yes. Okay, on the 6th..

1 Q And in the first e-mail and
2 chain, which is at the bottom of the page,
3 the e-mail discussion, there is an e-mail
4 from Darren to Dicker that is reprinted in
5 the post, "Is a problem, need to figure out
6 how to explain it away."

7 A Yes.

8 Q And your response is, "I missed
9 the e-mail. What is it?"

10 A Right.

11 Q And he responds, and indicates
12 it's concerning the Mike Long claim.

13 A Right.

14 Q Depending on how you read it, an
15 admission that SP was doing more than we've
16 been saying.

17 Read closely, he seems to be
18 talking about the previous administration,
19 which I think is the answer.

20 A Right.

21 Q This e-mail chain seems to
22 indicate there is a fair amount of discussion
23 going on about Darren's explanations as
24 they're cited in the post.

25 A Well, actually, I read it

1 differently.

2 Q How do you read it?

3 A Well, my response to Rich on the
4 6th, which is the day after this article --
5 again, I don't think it's at 6:04 a.m.
6 Mountain Standard Time, putting that aside --
7 is, "I missed Darren's e-mail. What is it?"

8 Which establishes, as I said, I
9 didn't read Dicker's article, but also would
10 have seen the e-mail. Because as I say, I
11 don't read Fred's articles.

12 So I said to him, "What's in the
13 e-mail? What is this?"

14 Rich then says, "Reprinted in the
15 Post, not with me now.

16 But basically, it goes into the
17 Mike Long claim.

18 And then it seems to be this
19 issue, I think, he's relating to the keeping
20 of basic records, i.e., logs.

21 That's what I take it to mean
22 right now. But beyond that, I don't know.

23 MS. HIRSHMAN: You don't have any
24 recollection, as you sit here today of that,
25 you're speculating having looked at

1 Commission's Exhibit 53.

2 THE WITNESS: That's correct.

3 MS. HIRSHMAN: In conjunction
4 with 56.

5 THE WITNESS: That's correct.

6 Q And in the e-mail, Rich Baum
7 says, "It's an admission that SP was doing
8 more than we've been saying."

9 A Yes.

10 Q What was the position that the
11 chamber had been saying as far as what SP had
12 been doing?

13 A As I said, they were following
14 the standard operating procedure, which is
15 what we had been saying, and in fact, what I
16 said, this is the 6th, that is precisely what
17 I said two days later, on the 8th. This is
18 Saturday the 6th, Monday is the 8th.

19 After this, on the 8th, I say
20 they followed standard operating procedure.

21 Rich is concerned that this
22 e-mail will create the impression that they
23 were doing something other than that, even
24 though what he says in the e-mail is, I,
25 Rich, think what Darren is really saying here

1 is that in the prior administration they may
2 have been doing something else, but who
3 knows.

4 A critical point here, and this
5 goes back to the earlier e-mail down at the
6 bottom, is point number two, in the second
7 full paragraph, all that happened here is the
8 SP used documents sent by Bruno's office. No
9 other info was generated or was asked for.

10 That's one of the critical points
11 he thinks we need to make, which obviously,
12 he believes is accurate.

13 He's worried that Darren's e-mail
14 will be misinterpreted.

15 What he says at the top is, I
16 think what he really means is that during the
17 Pataki administration some other stuff was
18 going on, but we don't know.

19 This is in the course of what I
20 said earlier was the effort to determine what
21 happened, so that on the 8th, when I see the
22 press, I can be crystal clear and precisely
23 accurate in my comments.

24 MS. HIRSHMAN: Let me clarify
25 something.

1 I think the 6th is a Friday.

2 THE WITNESS: Okay.

3 MS. HIRSHMAN: The 8th is a
4 Sunday.

5 THE WITNESS: Okay.

6 MS. HIRSHMAN: So you don't
7 recall that your visit would have been on a
8 Sunday?

9 THE WITNESS: No.

10 It was the next Monday.

11 Am I correct? It was the next
12 Monday that I was in Albany.

13 You can check that.

14 Q Now, you referenced Paragraph 2,
15 that the SP used the documents sent by
16 Bruno's office.

17 A Yes.

18 Q Was that your understanding, was
19 that these documents had been provided by
20 Senator Bruno's office?

21 A I have no idea.

22 Q Did you ever discuss with Rich
23 Baum that these documents were sent by
24 Senator Bruno's office?

25 A No.

1 Which documents do you mean?

2 Q The documents, I assume the
3 documents that are the subject of the TU
4 article, the Post article, and what's causing
5 all the flurry is the transportation
6 documents concerning Senator Bruno.

7 A You're presuming.

8 I have I know idea that said what
9 documents were turned however to the TU, how
10 they were generated, from whom.

11 I took it, when Rich said to me
12 one of the points we have to make is that
13 these were the documents provided by Senator
14 Bruno's office. I said okay, fine, that must
15 be the case. Otherwise, he wouldn't have put
16 that.

17 But I did not inquire, other than
18 as I said, to say was standard operating
19 procedure followed.

20 Q What was your understanding as to
21 what the standard operating procedure was at
22 this time?

23 A With respect to what?

24 Q Well, you're saying standard
25 operating procedure was followed.

1 A Yes.

2 With respect to how they would
3 move Senator Bruno when he flew to New York,
4 or wherever he may have been.

5 I didn't care what it was, as
6 long as whatever it was is what they did.

7 I don't know what the standard
8 operating procedure was for me. When I
9 showed up, there was a car, there was an
10 airplane, a helicopter, whatever it was they
11 would do, but I never told them to vary it,
12 or asked them to vary it for him or for me.

13 That's all I cared about.

14 Whatever it was was irrelevant to
15 the issue, which is, did it vary. That's the
16 only issue I cared about.

17 Q So the standard operating
18 procedure that's referred to here, or by you,
19 is the standard operating procedure of the
20 State Police in moving Senator Bruno around?

21 A Right.

22 Q It's not standard operating
23 procedure of the State Police in terms of
24 keeping documents?

25 A For all of it.

1 But the issue was surveillance.

2 Q Yes.

3 A The issue was surveillance. And
4 I said, "Did they do anything different, out
5 of the ordinary? Get me the answer."

6 The answer that came back was
7 they followed standard operating procedure.

8 Which is, I think, if you go to
9 my statement at the school on Monday, that's
10 what I said.

11 And I don't think there is
12 contrary evidence.

13 Q You don't think there is contrary
14 evidence to your statement?

15 A With respect to surveillance,
16 with respect to the variance from the
17 standard operating procedure that I asked
18 about.

19 Q In terms of the record-keeping
20 procedure?

21 A That I don't know.

22 In terms of the surveillance,
23 which is what this was about. The headline
24 here is tracking his movements. I said, "Was
25 he surveilled?"

1 I said, "Let me know if there was
2 any variance from the standard operating
3 procedure."

4 Q Did there come a time where you
5 became aware that the record-keeping
6 procedure in this circumstance concerning
7 Senator Bruno was different than the
8 procedure they had followed in the past?

9 A I became aware that there were
10 allegations of that as this issue was then
11 subsequently investigated by the IG and the
12 AG.

13 Q And when did you become aware of
14 that?

15 A The very end of July. After --
16 I'm not sure. At some point in late July is
17 my best recollection.

18 I'm not sure when and how that
19 came to the surface.

20 MR. TEITELBAUM: Just for a
21 second, for a logistical issue, in terms of a
22 car, and whatnot, do you know how far you are
23 from finishing?

24 Let's go off the record.

25 (Recess had.)

1 MR. TEITELBAUM: As to when you
2 learned about these allegations, was that
3 after the Attorney General's report came out?

4 THE WITNESS: I don't know.

5 There were a sequence of
6 allegations raised after the article came
7 out.

8 First was surveillance. That's
9 why we responded to the surveillance
10 allegation.

11 Then there was an allegation of,
12 I gather, the records were not kept properly.

13 Frankly, I stopped focusing on
14 this issue, because you may remember there
15 was actually some people trying to get work
16 done. July 16, there was a session.

17 Thereafter we negotiated a deal
18 on congestion pricing and campaign finance
19 reform that totally captivated me, and I had
20 no interest in this issue, and no involvement
21 in this until the Thursday which would have
22 been the 20th, the 19th, whatever that
23 Thursday was, when, after I had a press
24 conference announcing an agreement on
25 campaign finance reform and congestion

1 pricing, and I sat down and was given a
2 briefing on what had been occurring in this
3 regard.

4 So I do not know where along that
5 spectrum the issue of documentation arose, if
6 at all.

7 MR. TEITELBAUM: Who gave you the
8 briefing?

9 THE WITNESS: That was David
10 Nocenti. Rich was there. It was in Rich's
11 office. And I don't know if one or two other
12 people were in the room, but I don't recall.

13 MR. TEITELBAUM: And that's when
14 you found out about the allegation?

15 THE WITNESS: That's when I
16 reengaged with this issue.

17 I don't know if that's when I
18 found out that there was an issue relating to
19 documentation, how they were gathered. I do
20 not know.

21 But that was the moment when I
22 then began to hear again about these issues.

23 MR. TEITELBAUM: Did there come a
24 time when you learned whether the manner in
25 which information was conveyed and documents

1 were accumulated, documents were created,
2 departed from normal State Police practice?

3 THE WITNESS: I know it became an
4 issue. I do not know if it did or did not
5 depart from -- as we sit here today, I do not
6 know if it did or did not depart from
7 ordinary State Police practice, because there
8 were statements that it was a practice, it
9 was discontinued, it was started once again.

10 I do not know what they did and
11 how they did it.

12 And frankly, I don't care what
13 they did.

14 MR. TEITELBAUM: Did there come a
15 time when you learned whether the State
16 Police were conveying information regarding
17 Senator Bruno's movements to Howard on a real
18 time basis.

19 THE WITNESS: That was made
20 aware -- I became aware that there was an
21 issue about that at the end of July, sometime
22 either at this briefing or thereafter.

23 MR. TEITELBAUM: Was that looked
24 into by the Executive Chamber as to whether,
25 in fact, that was going on?

1 THE WITNESS: At that point,
2 there was already an Attorney General and an
3 IG investigation.

4 So the IG was going to look into
5 that. At that point the IG was the
6 appropriate party to look into all of these
7 issues. And that was their jurisdiction.

8 MR. TEITELBAUM: Is that also
9 true with respect to the creation of
10 documents?

11 THE WITNESS: True, because
12 certainly nobody within the Executive
13 Chamber, as you would ordinarily define it,
14 was going to look into it. It was going to
15 be either the IG, or the State Police,
16 Inspector General, or some entity that had
17 actual jurisdiction over this.

18 Q I'm going to provide you copies
19 of what was previously marked as Commission
20 Exhibits 1, 2, 3 and 4.

21 A Okay.

22 Q I ask if you've seen these
23 documents before.

24 A No. Unless they are part of the
25 FOIL response that I saw the first time

1 today.

2 Unless you've shown them to me
3 today, and they were part of that, the answer
4 is no.

5 Q And, for the record --

6 A And one of them actually looks
7 like --

8 Q Portions of these documents were
9 part of that.

10 A Beyond that, no.

11 Q There is evidence in the record
12 that these documents were created by the
13 State Police after the transportation had
14 actually occurred, in response to a request
15 that was represented to be from the Executive
16 Chamber.

17 Were you aware of that request?

18 A No.

19 Q At any time did you become aware
20 of that request?

21 A No.

22 Q In your briefing on, I believe
23 you said it was July 19th --

24 A Thursday, whichever.

25 Q -- did Mr. Nocenti, or anyone who

1 conducted the briefing, relate to you that
2 there had been the creation of documents by
3 the State Police?

4 A I don't believe so.

5 What they did was go through
6 their preliminary take on what these were.

7 Q And what was that preliminary
8 take?

9 A They had been working with the
10 Attorney General's office to facilitate their
11 acquisition of documents.

12 Q "Their" being the Attorney
13 General's office?

14 A Right. Of documents to reach
15 whatever conclusions they were going to
16 reach.

17 Q And did anyone ever indicate to
18 you in that briefing that they had reviewed
19 documents that had been created by the State
20 Police?

21 A I don't remember at that point.
22 That's why the issue of creation of
23 documents, it's hard for me to place it.

24 I don't recall at this point in
25 time if the issue was whether documents were

1 being created or not, the issue was whether
2 or not there had been surveillance, whether
3 or not there had been anything that deviated
4 from standard operating procedures in other
5 ways.

6 Q And was it relayed to you at the
7 briefing that members of the Executive
8 Chamber, specifically Darren Dopp and Bill
9 Howard, had been advised that they should
10 obtain outside counsel?

11 A I don't believe I was told that.
12 I don't remember that coming up at that
13 Thursday meeting.

14 I became aware of it by Sunday
15 night, because on the eve of when the
16 Attorney General's report was coming out, and
17 there was an issue of a statement from
18 Darren, he had outside counsel.

19 But I don't remember knowing
20 Thursday that he had been told that.

21 Q Did there come a time when you
22 were advised --

23 A Well, as I just said sometime
24 between then and Sunday night I became aware
25 of it.

1 When along that seventy-two-hour
2 spectrum I became aware of it, I do not know.

3 Q Do you know who advised you of
4 that?

5 A No.

6 Q Were you told why those
7 individuals should obtain outside counsel?

8 A No. No, I was not.

9 I'm a former Attorney General. I
10 know what it means when somebody says to get
11 outside counsel.

12 Q Was it ever discussed with you
13 who should be obtaining outside counsel in
14 the Executive Chamber?

15 A No. Who beyond Bill or Darren,
16 whether they should? No.

17 It was stated to me as fact that
18 they had outside counsel.

19 I don't remember the conversation
20 actually relating to Bill Howard.

21 With respect to Darren, it arose
22 because of the issue of his statement on
23 Sunday.

24 Q And how did it arise?

25 A Just that he was going to --

1 there was going to be a statement that he
2 would submit to the Attorney General's
3 office, but that he had outside counsel who
4 would prepare it, or craft it.

5 That is Darren's outside counsel.

6 Q Did you ever ask about why Darren
7 had been suggested to get outside counsel?

8 A I don't know if I was told that
9 he was told, or it was suggested that he get
10 it, or that he had done so independently.

11 And I don't know, as we sit here
12 today, which it was.

13 He might have determined on his
14 own to get outside counsel.

15 I don't know if he got it, he was
16 told to get it. I was told that he had
17 outside counsel. And I did not inquire who
18 it was, or how he obtained it, or what the
19 reason was.

20 Q Or who made that decision?

21 A No, I did not.

22 Q And you mentioned the Sunday
23 night statement. What statement are you
24 referring to?

25 A Well, the statement which was

1 crafted, and Darren submitted by Sunday
2 night, at some point along the way.

3 Q And what was that statement?

4 A Well, you have the statement, the
5 statement which he submitted to the Attorney
6 General's office.

7 Q Did you participate in reviewing
8 that statement at all?

9 A I saw drafts of it. I did not
10 participate in editing it.

11 As you've seen from the e-mails
12 over the course of the weekend when -- I did
13 not.

14 I was not involved in this until
15 Saturday morning, when the AG's office and
16 the executive were going back and forth about
17 the process with releasing their report, or
18 issuing their report.

19 The issue of the statement from
20 Darren was raised. I was curious, obviously,
21 to see what he said the facts were. I was
22 curious as this was unfolding what had
23 happened.

24 So I said the e-mails as you've
25 seen, what is the statement, and what does it

1 say.

2 Q And what was your understanding
3 as to how that statement came about? In
4 other words, did the AG request it, did the
5 Executive Chamber offer it?

6 A I do not know. I know that there
7 was a determination made, whether by Darren,
8 by his lawyers, by others, I do not know,
9 that he was not going to testify, but that he
10 would offer a statement in lieu of testimony.
11 And so I was curious to see what that
12 statement would be.

13 Q And was it your understanding
14 that anyone else would be giving a statement
15 to the AG?

16 A Yes, Rich Baum.

17 Q And did you review that
18 statement, as well?

19 A I did not review it as an editor.
20 You can see from the e-mails, I said, "What
21 are the statements?" I'm curious what these
22 facts are.

23 Understand, as I've said, this
24 was an issue, this entire set of issues had
25 completely fallen off my radar screen during

1 the week-and-a-half prior to that Thursday.

2 That Thursday afternoon, I go in,
3 I'm exhausted, because we were working
4 literally around the clock on substantive
5 issues.

6 I go to Columbia County Thursday
7 night, leave early to go to New York City
8 Friday morning.

9 And Friday afternoon I get calls
10 that this is likely to happen over the
11 weekend, Monday. Saturday morning begin to
12 talk to these folks about it again.

13 So I'm curious what all this has
14 amounted to, and what the issue is.

15 MR. TEITELBAUM: Did the
16 Executive Chamber take a position as to
17 whether or not Dopp should submit to
18 testimony?

19 THE WITNESS: I don't know what
20 you mean by the Executive Chamber.

21 MR. TEITELBAUM: Members of the
22 Executive Chamber.

23 THE WITNESS: I don't know. You
24 would have to -- I don't know if David
25 Nocenti took a position. I don't know if

1 Peter Pope would. Who knows.

2 There were people involved. I
3 don't know if they collectively took a view,
4 or independently took a view.

5 I know that there was a
6 conclusion that he was not going to testify.
7 Whether that was his conclusion, his lawyer's
8 conclusion, or somebody else's, I don't know.

9 MR. TEITELBAUM: Was there any
10 discussion that you were aware of among
11 members of your staff to persuade Dopp not to
12 give testimony to the Attorney General?

13 THE WITNESS: I do not know.

14 I know, I think it was Friday
15 afternoon, I was in the city, I was leaving
16 New York City, I believe being told that he
17 was not going to testify, and that the
18 Attorney General had concluded its
19 investigation.

20 What had been told to people,
21 whoever was dealing with the AG's office,
22 they were done, and Darren was not going to
23 testify, and that there would be a statement
24 instead.

25 MR. TEITELBAUM: With regard to

1 Mr. Baum, did you ever learn that Mr. Baum
2 wanted to give testimony to the Attorney
3 General?

4 THE WITNESS: Ever learn that?
5 Yes.

6 MR. TEITELBAUM: Did you ever
7 learn that Mr. Dopp wanted to give testimony
8 to the Attorney General?

9 THE WITNESS: I'm not sure I ever
10 heard that.

11 Because I don't think I've spoken
12 to Darren since early July.

13 MR. TEITELBAUM: When did you
14 learn that Mr. Baum wanted to give testimony
15 to the Attorney General?

16 THE WITNESS: After the AG's
17 report was issued, I believe at some point,
18 and the issue of why Darren and Rich had not
19 testified was being raised, I believe Rich at
20 some point, either orally or in writing,
21 said, "I want to testify."

22 Now, I don't know if he was
23 persuaded not to by the Executive Chamber
24 lawyers, his lawyer, I don't know.

25 MR. TEITELBAUM: The first time

1 you found out that he wanted to testify was
2 after the AG's report?

3 THE WITNESS: Yes, I believe so.

4 Q What was your understanding of
5 the amount of input that the Executive
6 Chamber staff had in the AG's report?

7 A Minimal.

8 I know there were conversations.
9 And I know that there was back and forth with
10 the AG's office. I was not party to any of
11 it, so I can't quantify it, or give you a
12 sense of texture.

13 And I certainly don't know what
14 the report looked like before the input, what
15 it looked like after.

16 So I don't know if it had any
17 input at all, or affect on the final outcome.

18 I do know that the Attorney
19 General's office wanted to get from us a
20 statement, a statement that we would issue
21 after their report was issued, prior to our
22 having seen their report.

23 And for whatever misguided
24 reason, they were willing to do that.

25 Q When you say "whatever misguided

1 reason," what do you mean by that?

2 A Just that when I look back,
3 agreed to craft a statement, and show it to
4 the AG's office ahead of time, saying, "Here
5 is what we will say about your report."

6 And, in retrospect, we knew that
7 that report was, at a minimum, terribly
8 incomplete, and based upon an incomplete
9 record.

10 Q And were you apprised of the
11 conversations that were occurring between
12 members of the Executive Chamber staff and
13 the AG's staff?

14 A I knew there were conversations,
15 but I did not know the substance of each of
16 them, or even more than the general tenor of
17 them, in the sense that on Saturday and then
18 Sunday they said, "Look, we have had
19 conversations with the AG's office, here is
20 what we think their report will generally
21 say."

22 And this was part of the back and
23 the forth. The Attorney General wanted to
24 know what our statement would be upon
25 issuance of his report.

1 Q And who were you having those
2 conversations with?

3 A Primarily, Darren -- excuse me,
4 not Darren, primarily Peter Lloyd and two --
5 I'm not sure if Rich was part of that. Peter
6 Lloyd and maybe David.

7 Q And were you aware of the extent
8 to which the content of the AG's report was
9 being discussed with staff members? Did they
10 advise you of that?

11 A I think on Saturday morning --
12 and you can see this in the e-mails -- Peter
13 and/or Lloyd or David was given a general
14 sense of what the report would be.

15 Now, beyond that, I do not know.

16 I think there were major pieces
17 that they were not told about.

18 Q When you say "general sense," as
19 relayed to you, what does that mean?

20 A It means that they were told that
21 there would be a conclusion that there was no
22 violation of law, and that there had perhaps
23 been missteps taken, but there was no
24 violation of law.

25 Q And how detailed was that

1 information?

2 A I don't know how detailed it was
3 in its presentation to them.

4 I know that in the presentation
5 to me from either Peter or -- I believe Peter
6 is the one who then recounted it to me, what
7 he had been told by the AG's office.

8 He relayed to me the entirety of
9 what he knew, or what he told me, in probably
10 a minute.

11 So it was not, in its recitation
12 to me, a lengthy report.

13 Q Was it your understanding that
14 Peter was involved in fairly extensive
15 discussions concerning content with the AG's
16 office?

17 A I have no idea.

18 Q Did Peter ever relay to you that
19 they were reading to him large portions of
20 the report in advance of its issuance?

21 A I don't think he characterized it
22 that way.

23 He told me what the conclusions
24 were going to be, but I don't recall being
25 told they had read him significant portions

1 of it.

2 Q And did he identify to you areas
3 in which the chamber staff was in
4 disagreement with the AG in the report?

5 A I don't recall back then if we
6 focused on the areas of disagreement.

7 Q What were you focused on?

8 A On what their conclusions were.

9 Q And did he relay to you
10 concerning their conclusions on the creation
11 of documents by the State Police at that
12 time?

13 A I don't remember if he focused on
14 that.

15 Q And did he discuss with you the
16 e-mails that the chamber was providing to the
17 AG that appeared to implicate members of your
18 top staff to the AG?

19 A He at one point referred to some,
20 and told me that there were some e-mails that
21 indicated that e-mails that were in the
22 report that indicated that there was interest
23 in this issue of Bruno's use of the plane at
24 the senior levels, but he did not
25 characterize it much beyond that.

1 Q And did he discuss with you who
2 those e-mails involved?

3 A Sure, we discussed e-mails. It
4 was in the report. It was Darren, it was
5 Bill Howard. Again, it was Bill Howard was
6 involved, Darren. One or two involved Rich.

7 And I think that was it.

8 Q And was there any conversation
9 with anyone at that time concerning the
10 response from the Executive Chamber to the AG
11 report?

12 A Yes. They were crafting a
13 statement that the AG's office wanted to see.

14 Q I'm sorry, I should be more
15 clear.

16 In terms of a response for those
17 individuals who were employed by the
18 Executive Chamber.

19 A Well, later on the issue of what
20 sanctions would be appropriate was a topic of
21 conversation, as you know from the e-mails.

22 Q When you say "later on," when?

23 A I think that was more a Sunday.
24 You have the chronology. I think it was
25 Sunday afternoon, Sunday evening.

1 I went to Albany, and I said,
2 "This is something we've got to talk through.
3 And the appropriate sanctions, based upon the
4 AG's report have to be resolved if we want to
5 address this Monday morning in a forthright
6 way."

7 So that's what we focused on.

8 Q And was the issue of sanctions
9 discussed with the Attorney General's office?

10 A I don't know. I'm not sure.
11 We had internal conversations
12 about that.

13 Whether or not -- I'm not sure.
14 I'm not sure if they were ever apprised of
15 what we intended to do on the issue of
16 sanctions.

17 Q And you were not communicating
18 directly with the Attorney General's
19 office --

20 A No, absolutely not.

21 Q Prior to the issuance of the
22 report?

23 A Absolutely not.

24 Q And were you ever aware of
25 specific areas, or content in the report that

1 the Executive Chamber was requesting from the
2 Attorney General's office?

3 A Well, I was aware of what I told
4 Peter.

5 I told Peter at some point, and
6 there's an e-mail to this effect, I think it
7 was a question. I said, "Are they going to
8 include Dopp's and Baum's statements?"
9 Because I thought they were important.

10 So to that extent, if Peter
11 carried that request back to the AG's office,
12 I was aware of that.

13 I asked Peter whether it was
14 going to be a report that examined both
15 aspects of the inquiry, which was the issue
16 of -- what I viewed as the issue of
17 surveillance. That's how the issue had been
18 initially framed, and the issue of propriety
19 abuse of the aircraft.

20 And I was told it would address
21 both. Conclude there was no illegality,
22 conclude there was no surveillance. And then
23 there were going to be other conclusions,
24 which, frankly, I did not focus upon as much
25 until later on.

1 The issue of document creation,
2 and the issue of whether or not their claim
3 that this is pretext, which I think is a
4 complete misreading of the record. That's
5 what they concluded in that report.

6 Q And were there discussions
7 between you and other members of the
8 Executive Chamber staff concerning the
9 inclusion of the Chamber's cooperation in the
10 Attorney General report?

11 A I imagine so.

12 That would be an ordinary thing
13 for Peter, or whomever, to have raised, and
14 say, "Look, you should make it clear we
15 cooperated."

16 Q And did you ever discuss ways in
17 which you could try and ensure -- and perhaps
18 that's too strong a word -- the inclusion of
19 that in the report?

20 A Did I? I have no recollection.

21 But I'm sure that that was an
22 issue.

23 This was essentially a
24 discussion/negotiation with the Attorney
25 General's office, was were trying to extract

1 from the executive an affirmative statement
2 about its report.

3 And the lawyers for the chamber
4 were saying, "Fine, we're happy to do this,
5 but you've also got to be clear that we
6 cooperated."

7 It was a very standard
8 conversation that goes on between or among
9 parties who are releasing a document that
10 concludes, was intended to conclude, at least
11 part of an investigation.

12 Q Were there ever conversations
13 concerning the inclusion or exclusion of
14 particular members of the Executive Chamber
15 in the report?

16 A Not that I'm aware of.

17 In other words, make it more
18 definite, whom.

19 Q Well, obviously Mr. Dopp was
20 identified in the report?

21 A Yes.

22 Q And Mr. Howard was identified in
23 the report?

24 A Yes.

25 Q Were there ever conversations

1 concerning the extent to which Mr. Baum would
2 be included in the report?

3 A Not that I'm aware of.

4 That was not something that I was
5 either party to, raised, or had any
6 conversations with anybody about.

7 Q And in terms of discipline, were
8 there ever conversations concerning Mr.
9 Baum's -- any potential discipline for Mr.
10 Baum?

11 A Prior to issuance of the report,
12 I don't believe so, because it wasn't until
13 we saw the report Monday morning that we
14 understood who they suggested had acted
15 improperly, after the report.

16 But I don't believe that they
17 suggested that Rich Baum acted in violation
18 of any of his statutory or ethical
19 obligations.

20 Whereas with respect to Darren,
21 Preston Felton, and Bill Howard, they reached
22 a contrary conclusion, which is why the
23 conversation of sanctions relating to those
24 three -- and we knew that they were going to
25 be involved in the report -- was something

1 that we participated in.

2 Q And Preston Felton, concerning
3 inclusion of any sanction against Preston
4 Felton, was that discussed with you?

5 A By who?

6 Q With members of your staff as
7 they were discussing it with the Attorney
8 General's office?

9 A Separated out. As I said, I
10 don't know if the issue of sanctions was
11 discussed at all with the Attorney General's
12 office.

13 Conversations with respect to
14 sanctions I had were internal. That was my
15 decision. And I wanted to garner the advice
16 of those on my staff, and then I would make
17 the final determination about it.

18 The issue of sanctions was not
19 something that I felt the AG's office should
20 be part of.

21 Q Were you aware that the issue of
22 sanctions was being discussed with the
23 Attorney General's office?

24 A As I just said, I'm not aware if
25 it was or it wasn't. My concern was what I

1 believed the appropriate sanction was for
2 each of those three.

3 Q In the statement that you were
4 providing to the Attorney General's office
5 prior to the issuance of the report, or the
6 proposed statement that was being provided,
7 did it include the discussion of sanctions?

8 A We have to look at it. As I sit
9 here today, I don't know.

10 Q And are you aware of
11 conversations concerning that statement and
12 sanctions between the AG's office and members
13 of your staff?

14 A I answered that. I've already
15 told you. I don't know if that statement
16 referred to sanctions. I don't know if
17 sanctions was discussed with the AG's office.

18 When it came to sanctions, I
19 viewed it as my determination, and I was
20 going to impose the sanctions that I
21 believed, based on the record, should be
22 imposed.

23 I don't know if the AG's office
24 was or was not part of that, and I don't know
25 if it was in the statement.

1 Do you have the statement here?

2 Does it, in fact, refer to sanctions?

3 Q Yes.

4 A And they saw it.

5 And what did I say about

6 sanctions.

7 Q You discussed the individual

8 sanctions as to --

9 MS. HIRSHMAN: Why don't we look
10 at the document.

11 A I'm not going to play a guessing
12 game.

13 MS. HIRSHMAN: He said he doesn't
14 remember.

15 So if we have the document, we
16 can show it to him. I can read it, or we can
17 move on.

18 But we are not going to have as
19 the record evidence the questioner's
20 recollection of what the statement says.

21 Fair enough?

22 MS. TOOHER: I was just
23 responding to a question.

24 MS. HIRSHMAN: Understood.

25 And I'll ask you, Mr. Spitzer,

1 not the ask the questioner questions.

2 Could we take a break?

3 MS. TOOHER: Yes.

4 (Recess had.)

5 Q You've been provided copies of
6 what has been marked as Commission's Exhibits
7 144, 145 and 146. Can you identify these
8 documents?

9 A They appear to be sequential
10 drafts of the statement I was going to
11 issue.

12 Q And is this the statement that
13 you were going to issue in response to the
14 Attorney General report?

15 A It would appear to be, yes.

16 Q And have you seen these
17 statements before?

18 A Yes.

19 Q I'm sorry?

20 A Yes.

21 Q And are you aware as to whether
22 or not these statements, or these drafts,
23 were provided to the Attorney General's
24 office?

25 A I do not know specifically if

1 these drafts were provided to the AG's
2 office. I know that over the course of the
3 weekend, various drafts were discussed, and I
4 believe provided to the AG's office.

5 I do not know if these precise
6 drafts were provided.

7 Q And who was responsible for
8 having those conversations with the AG's
9 office, do you know?

10 A No.

11 Again, I've mentioned what I
12 believe to be the universe of people involved
13 Peter, David, maybe Lloyd, but I'm not
14 positive, but certainly Peter and David.

15 Q And if I told you that there was
16 evidence in the record that copies of these
17 statements had been provided to the Attorney
18 General's office, would you have any reason
19 to dispute that?

20 A No.

21 Q And in the statement, look at
22 146, which is the latest statement.

23 A Yes.

24 Q If you look to the second page.

25 A Yes.

1 Q It discusses personnel actions --

2 A Yes.

3 Q -- concerning Darren Dopp,
4 William Howard, and in italics, Preston
5 Felton.

6 A Yes.

7 Q Why are the discussions
8 concerning Preston Felton in italics; do you
9 know?

10 A Well, at the end, I did not
11 sanction Preston Felton, and I know over the
12 course of the weekend, although it was based
13 upon our understanding of what the
14 conclusions of the report would be, it seemed
15 clear that there would be some sanction
16 imposed upon Darren and Bill Howard.

17 I was, to say the least,
18 ambivalent about imposing sanctions on
19 Preston Felton.

20 And the intent here may have been
21 to indicate that it was an uncertainty.

22 Q And you indicated it became clear
23 that there were going to be sanctions against
24 Darren Dopp and William Howard. Why is that?

25 A Based upon our acceptance of the

1 conclusions of the Attorney General's report,
2 although we now believed that they were based
3 upon significantly incomplete and inaccurate
4 factual records. Nonetheless, at that time,
5 accepting those statements as accurate, it
6 seemed the appropriate thing to do.

7 Q The first sentence in that first
8 full paragraph on page 2, "I" -- meaning you,
9 "have decided to take two personnel actions
10 based upon the clear lapses in judgment that
11 occurred."

12 What were those lapses in
13 judgment that you're referring to at that
14 juncture?

15 A Well, again, based upon the
16 Attorney General's report as we understood
17 it, it was the failure to pursue FOIL
18 processes as would have been dictated by
19 ordinary procedure, magnified by the reality
20 of this involved a political environment,
21 where people could impute improper motives to
22 what was being done, and the issues relating
23 to how information was gathered that was also
24 referred to in the AG's report.

25 Now, I don't know if at this time

1 we were aware of what really was the
2 essential argument in the Attorney General's
3 report, which was that the entire claim of a
4 media request was a pretext.

5 I do not know -- and there may be
6 something which can shed light on that -- I
7 don't know if that was part of our
8 understanding of the AG's report.

9 It may or may not have been.

10 And that is the piece that I
11 think has now been, as I understand the
12 record, significantly altered by a more
13 complete factual inquiry, which goes back
14 earlier to the mid-May and the early May
15 period.

16 Q But as of July 22, 2007, and the
17 information that you had at that time, the
18 lapses in judgment you are referring to are
19 the avoidance of the FOIL protocol, if I can
20 use that word?

21 A I just answered several others,
22 as well.

23 Q And in terms of Preston Felton at
24 that time, what was your impression as to his
25 involvement?

1 A Again, I had not read the report.
2 Obviously, we didn't see it until Monday
3 morning. I was relying upon an abbreviated
4 recitation to me of what was told to either
5 Peter or David, whoever it may have been, of
6 what was going to be in the report.

7 But my sense was that I was
8 dealing here with somebody who had spent
9 thirty years in uniform, an extraordinarily
10 honorable career, who had been asked to
11 gather, or provide, certain information by
12 the second floor.

13 And I did not feel that he should
14 be made a fall guy or scape goat -- and those
15 are not necessarily the precise terms -- for
16 having responded to the requests for
17 information that were made to him by his,
18 technically, his superiors in the State
19 government, somebody I respected, and I had
20 respect for his three decades of service.

21 Q And when did you become aware
22 that Preston Felton had received these
23 requests from the Executive Chamber or his
24 superiors?

25 A This is over the course of

1 Saturday, Sunday, that we were trying to
2 parse through what the appropriate sanctions
3 would be, dealing with an incomplete
4 understanding of what was going to be in the
5 report that we hadn't read. We were trying
6 to, basically, feel our way in the dark,
7 saying, okay, what is the appropriate
8 sanction to impose.

9 Q And if I can take you to page 1,
10 again, of Exhibit 146.

11 A Yes.

12 Q And the third paragraph up from
13 the bottom.

14 Concerning the, if you will,
15 collection of information concerning a
16 political opponent.

17 And about halfway through that
18 paragraph, "Every effort should have been
19 made to follow proper procedures, and thus
20 reduce any perceived conflict."

21 A Yes.

22 Q What would have been the proper
23 procedures in this case?

24 A I suppose when a FOIL was
25 received, simply send it to the FOIL office.

1 Q And if an oral inquiry were made,
2 what would be the proper procedure?

3 A Frankly, that's why this is such
4 an ambiguous area.

5 We had been providing information
6 about use of the airplane, as had prior
7 administrations, I presume, for years.

8 The media says, "We want
9 information about the use of the airplane,"
10 you gather it, turn it over to them.

11 If it had not been for the
12 screaming and shouting, and Darren, or if
13 somebody else had simply said here are the
14 manifests, here are the documents that were
15 signed off by Senator Bruno's office,
16 requesting use of the plane, I don't think
17 anybody would have complained.

18 And then, frankly, it would be
19 hard to know how anybody could have. This is
20 all public information about a public plane,
21 and it should be, and should continue to be
22 public information.

23 I think the problem was, that as
24 we believed at this point in time, based upon
25 what we were told about the AG's report,

1 Darren arguably had gone directly to the
2 State Police and said, "We want other
3 documents to turn over."

4 And that process of gathering the
5 documents was not the ordinary course of
6 responding to a FOIL or a media request. So
7 you're dealing with the State Police records
8 relating to somebody in a political context,
9 where, as I say, you have to be
10 extraordinarily careful.

11 But as I also say in this
12 sentence, it is clear that there was no
13 illegality.

14 Q And the perceived conflict here,
15 what is the perceived conflict?

16 A Joe Bruno, who is the head of the
17 Republican Party in the state, and I'm the
18 Governor, and the head of the Democratic
19 Party, so there is a perception, as you can
20 certainly have seen in the prior three weeks
21 of press that this was not tea and crumpets
22 that we are playing out in front of the
23 Capitol.

24 Q And the creation of an appearance
25 that the State Police were being used

1 inappropriately, what was that inappropriate
2 use?

3 A The report insinuated, and as I
4 just said, I think improperly, and didn't
5 insinuate, said overtly, that this had been
6 pretextual, that there, in fact, had not been
7 media inquiries.

8 And hence, the inappropriate use
9 of the State Police to gather documents that
10 were not, in fact, responsive to a legitimate
11 inquiry, but were merely designed to generate
12 a story that would paint Senator Bruno in a
13 negative light, using the plane for political
14 purposes.

15 Now, the alternative view is,
16 there were, in fact, media inquiries, the
17 information was all public, it was accurate
18 information, and it framed an issue that
19 deserved to be focused upon, and arguably had
20 the appropriate result of changing the State
21 ethics rules.

22 Q If the first interpretation that
23 you voiced, which is what is somewhat
24 reflected in the AG report, that the State
25 Police were being utilized to gather

1 information concerning Senator Bruno, to, in
2 effect, create a bad article, would that be
3 an inappropriate use of the State Police?

4 A It would be inappropriate for
5 somebody to involve a law enforcement
6 organization in an effort to create a
7 political story.

8 That is my personal view, which
9 is why I have always tried to be incredibly
10 careful when you are anywhere near law
11 enforcement.

12 And I said this this Monday
13 morning, when I spoke to the press, I think,
14 if you have a transcript of what I said, it
15 was responsive to a question, not a
16 statement.

17 I said, "The problem here is you
18 cannot break that law between law enforcement
19 and politics."

20 But if, in fact, that's what
21 happened, that would be, in my view,
22 something -- it would be a lapse in judgment
23 that I referred to two or three paragraphs
24 below, that would deserve the sanction.

25 Now, whether that was, in fact,

1 the case, because I now believe that there
2 was -- and I think the record is overwhelming
3 on this point, and nobody has challenged it,
4 I don't believe -- there were, in fact, media
5 inquiries, and so forth, not a pretext.

6 Now, whether every step along the
7 way was proper, that's a separate issue. But
8 there was, in fact, a media inquiry, as there
9 had been for many months and years on this
10 issue, and so, it frames the issue marginally
11 ly different than you just did, but still
12 raises this tension between law enforcement
13 and politics which one must be conscious of.

14 MR. TEITELBAUM: Mr. Spitzer, did
15 you ever learn as to why these statements
16 were being submitted to the Attorney General?

17 THE WITNESS: I think it's fair
18 to say the Attorney General was saying, "We
19 want to know what you're going to say."

20 I think the Attorney General's
21 office was very fearful that we would come
22 out and blast their report.

23 MR. TEITELBAUM: Did you know
24 what that fear was based on?

25 THE WITNESS: I don't want to

1 speculate now, but now, I think it's
2 certainly interesting as we now look back on
3 it, that we know the report was certainly
4 substantially incomplete as it related to
5 many significant factors here.

6 I don't know that they knew that
7 at the time. But I think, with anybody who
8 is issuing a report, they were perhaps more
9 expressly with this Attorney General's
10 office, they were very conscious of what the
11 response would be.

12 This was very much, as I
13 understand it, very much at their
14 instigation. They said, "We want to see your
15 statement."

16 In hindsight I wish I had said,
17 "Forget it."

18 Q And at a certain point in time,
19 the Attorney General's report did come out,
20 and I think you have pretty much encapsulated
21 it, made a determination that no criminality
22 had occurred, but that there were ethical
23 lapses, if you, will, as they described it.

24 A Okay. Did he say no criminality
25 or no violation of law?

1 Q No violation of law.

2 A Okay. But potentially ethical
3 violations, hence your jurisdiction.

4 Q Were you in communication with
5 the DA's office at the time that the Attorney
6 General was preparing their report, or was
7 the Executive Chamber in communication with
8 the DA's office?

9 A I don't know. I personally was
10 not. Whether members of the Executive
11 Chamber were, I do not know. At some point
12 down the road they obviously were. When that
13 began, I do not know.

14 I don't know when the DA's office
15 began its inquiry. I don't know the answer
16 to that.

17 Q I want to show you what has
18 previously been marked as Commission's 157.

19 (Witness reviewing document.)

20 Q And these appear to be a series
21 of e-mails between members of the Executive
22 Chamber in response to a request from the
23 Albany County DA's office to review a
24 statement by that office.

25 Were you aware of these

1 communications?

2 A I'm looking, and I'm trying to
3 read it quickly.

4 Q Take a moment.

5 A Did I receive any, I don't
6 believe I did.

7 Q But were you aware of them?
8 Were you aware of the
9 communications between members of the
10 Executive Chamber and the Albany County DA's
11 office?

12 MR. TEITELBAUM: Take your time.

13 Q There's no hurry.

14 A I don't recall being aware of
15 this.

16 And the reason I wanted to check
17 the recipients, the to and the from, was just
18 to see if I had received it, which obviously
19 was irrelevant.

20 I don't believe I was aware -- in
21 fact, I don't remember the -- I don't
22 remember this back and forth in terms of -- I
23 think David's observation, at the very top,
24 which is why are we commenting on their press
25 release, is neither here nor there.

1 Q Were you aware of the DA's office
2 turning to your office for comment on press
3 releases in the past?

4 A Now, I'm trying to think when we
5 dealt with that office.

6 The answer is no.

7 Q And you did not become aware of
8 this statement being commented on by your
9 office?

10 A No.

11 They initiated it, at least I
12 gather from the e-mail chain, it was
13 initiated by Richard Arthur, whose title I'm
14 not -- press person. I gather that was his
15 title.

16 Q Now, it was clearly initiated by
17 the District Attorney's Office?

18 A Right.

19 MS. TOOHER: Will you mark this
20 as Commission's Exhibit 179.

21 (Document marked Commission's
22 Exhibit 179.)

23 Q Showing you what has been marked
24 as Commission's Exhibit 179.

25 (Witness reviewing document.)

1 Q I have provided you with a copy
2 of what's been marked as Commission's Exhibit
3 179, and ask you if you've ever seen this
4 document before.

5 A If I have, only in the course of
6 the past few days or weeks since this
7 investigation proceeded.

8 Christine did not copy me on the
9 e-mail, in which she said she didn't think I
10 did well in answering the questions.

11 Q And the e-mail is dated 7/23,
12 which is contemporaneous with, or soon after,
13 the release of the Attorney General report?

14 A No, no, no, I actually think it's
15 before.

16 MS. HIRSHMAN: It's before.

17 A This is late Sunday night. I
18 think, if I read this, it's 7:23 at 1:18 a.m.

19 And what had happened was that I
20 had gone to Albany Sunday evening, and we had
21 a meeting to discuss what the response should
22 be.

23 We had done some Q and A in
24 response to this. And the reason she didn't
25 and others didn't think I did well was

1 because I actually thought there were
2 different approaches. And hindsight doesn't
3 matter.

4 But I wish I had stuck with my
5 position.

6 But this e-mail chain was
7 circulated prior to the press conference on
8 Monday morning.

9 Q And the bottom paragraph on the
10 first page, David Nocenti is writing to Rich
11 Baum and Christine Anderson, and the e-mail
12 says, the bottom line, it says the OAG report
13 does not even mention the Governor.

14 If we have a press conference,
15 then he'll have to say that he knew about the
16 impending release of information to the ATU,
17 which could be spun as his condoning a
18 political dirty truck.

19 What is he referring to when he
20 says, "You'll have to say you knew about the
21 impending release of information to the ATU?
22 Do you know?

23 A I think because, as I said, I had
24 the conversation with Darren in which I said,
25 yeah, answer the question, public

1 information.

2 In other words, it was
3 inevitable, and I have never tried to avoid,
4 I tried to ask the critically important fact
5 that at the end of June Darren came and said,
6 "We have a media request. What do we do?" I
7 said, "Answer them."

8 His recollection is more vivid,
9 passionate and more timely said than mine.

10 But the point is, my answer was,
11 "Answer the question."

12 The report painted it as a
13 political trick based upon a pretext.

14 I wish that we had said the
15 report is fundamentally wrong.

16 And I think the record now makes
17 it clear it was wrong, certainly as it
18 related to that element. It wasn't a
19 pretext. There were questions.

20 There may have been issues, there
21 may still be questions about the gathering of
22 the documents, creation, whatever, of
23 documents.

24 But David was rightly concerned
25 that if I, in any way, was shown to have

1 known about the release, as would inevitably
2 become clear, should become clear, people
3 would misunderstand that I had said, "Yeah,
4 you answer media questions, that's it."

5 MS. TOOHER: Will you mark this
6 as Commission's Exhibit 180.

7 (Document marked Commission's
8 Exhibit 180.)

9 (Witness reviewing document.)

10 Q You have been provided with a
11 copy of what has been marked as Commission's
12 180. Can you identify this document?

13 A An e-mail chain.

14 Q And at the bottom, the e-mail
15 starts, I believe, from you to David Nocenti.
16 This is now July 26th.

17 "I gather the Attorney General
18 didn't say anything publicly about Rich
19 today."

20 Who is Rich, as we are referring
21 to here?

22 A That's Rich Baum.

23 Q And David's response, "As far as
24 I know, he has not."

25 Were you anticipating a public

1 statement from the Attorney General
2 concerning Rich Baum?

3 A I have no idea.

4 There must have been a predicate
5 to my sending an e-mail to David, but I do
6 not know what it was.

7 There was a fair bit of press
8 inquiry about why Rich and Darren had not
9 testified. And so, maybe there had been a
10 call, or some indication from the AG's
11 office, that they were going to make some
12 statement.

13 Q And so, the continuation of the
14 e-mail up the line, "Should maintain contact
15 with him tomorrow, to make sure that he stays
16 the case"?

17 A Yes.

18 Q Are you aware that David Nocenti
19 was in touch with the Attorney General
20 concerning Rich Baum at this time frame?

21 A David was in contact with the
22 AG's office, and with the Attorney General,
23 over this time frame.

24 Q Concerning Rich Baum?

25 A Concerning a multitude of issues,

1 I guess.

2 Q I understand that, but the
3 e-mail --

4 A It would suggest that one of the
5 issues was Rich, sure.

6 Q And was there anything that you
7 were aware of that made you believe the
8 Attorney General was going to make a public
9 statement concerning Rich Baum?

10 A I just answered that. I don't
11 know. But it would certainly be logical to
12 presume that that was the predicate for the
13 first e-mail.

14 Q But you can't recall anything
15 specifically at this time?

16 A No.

17 Q Were there other issues besides
18 what was going on with the Attorney General's
19 report that involved Rich Baum and the
20 Attorney General's office at this time?

21 A Not that I'm aware of.

22 MS. TOOHER: I think if we can
23 take a short break, we can probably tell you
24 that we are about fifteen minutes from being
25 done.

1 (Recess had.)

2 MR. TEITELBAUM: Mr. Spitzer, the
3 Commission has information that after the
4 Attorney General's report was issued,
5 sometime in the latter part of July, e-mails
6 of Richard Baum, Bill Harris and Darren Dopp
7 were reviewed through June 17th. Are you
8 aware of that?

9 THE WITNESS: I just want to make
10 sure I understand the question.

11 The answer is no.

12 Sometime at the end of July, the
13 e-mails of Rich, Darren and Bill Howard were
14 reviewed through June 17th.

15 MR. TEITELBAUM: Right.

16 THE WITNESS: By whom and for
17 what?

18 MR. TEITELBAUM: Can we talk?

19 MS. HIRSHMAN: Yes.

20 (Recess had.)

21 MR. TEITELBAUM: Let me withdraw
22 the last question.

23 Mr. Spitzer, did there come a
24 time after the AG's report was issued that
25 you asked someone on your staff to review

1 your e-mails.

2 THE WITNESS: Yes.

3 MR. TEITELBAUM: And who did you
4 ask?

5 THE WITNESS: Lloyd ended up
6 doing it.

7 I'm not sure if I asked Lloyd to
8 do it specifically, or if I said I wanted
9 somebody to review the e-mails, just to make
10 sure that my recollections were correct, and
11 I understood fully what my involvement was,
12 if any.

13 MR. TEITELBAUM: And this
14 occurred in the latter part of July, this
15 review?

16 THE WITNESS: I think it was
17 earlier.

18 I'm not sure.

19 At some point I asked that we
20 check my e-mails, just to be clear about what
21 the record was. I'm not sure precisely when
22 it was.

23 MR. TEITELBAUM: What record are
24 you referring to now?

25 THE WITNESS: My involvement in

1 this entire situation.

2 Because I was firmly convinced
3 then, as I am now, that what had been done --
4 put aside the issue of how Darren collected
5 the documents perhaps was not only proper,
6 but is mandated by law in terms of releasing
7 public information, so we were correct on
8 that.

9 But always to be careful after
10 the fact about how you describe what
11 decisions were made, and I wanted to make
12 sure that what I stated was consistent with
13 what the record was, as best we could
14 reconstruct it.

15 MR. TEITELBAUM: And this review
16 took place after the report was issued?

17 THE WITNESS: That's where I'm
18 hesitating.

19 We can establish that fact,
20 because I think in one of the pieces of paper
21 I gave you it refers to the fact -- when
22 was -- I know I'm not supposed to ask
23 questions. Can we establish what the date
24 was when the Empire State meeting opened at
25 Westchester, and I went there that night? I

1 believe that was the day that some of this
2 review was ongoing.

3 So it may have been the week that
4 the report came out.

5 We can check my schedule.

6 MS. HIRSHMAN: Do you want to do
7 that?

8 THE WITNESS: My lawyer is
9 getting very upset with me.

10 I'm thinking out loud. So I'm
11 quite convinced that it was the middle of the
12 week that the report came out when we've seen
13 this recitation of facts, and I'm saying to
14 myself, this is not my what understanding was
15 of what my understanding was in terms of
16 pretext, and other issues. Let's see what
17 there is.

18 And that is why that week, I
19 started to check my e-mails.

20 Q So this is following the AG's
21 report?

22 A Yes.

23 MS. HIRSHMAN: I think there's
24 evidence in the record that that was on the
25 25th of July.

1 THE WITNESS: Okay.

2 MR. TEITELBAUM: And so if I
3 understand you correctly, this is kind of a
4 post hoc review, to see if your e-mails don't
5 contain any information that would be
6 inconsistent with the AG's report?

7 THE WITNESS: Transport yourself
8 back to where I am, and what I'm focusing on
9 at that point in time.

10 The article comes out, there is a
11 fair bit of screaming and shouting about
12 surveillance. I say very clearly, "No
13 surveillance."

14 I think these issues are pretty
15 much put to rest, and that you know my view
16 of the overarching issue, the Attorney
17 General is doing his report.

18 We go off and have several weeks
19 of legislative back and forth, and announce
20 the agreements on that Thursday.

21 That weekend, the report comes
22 out, the whole issue reemerges.

23 And I say, "I'd better dig into
24 this. This is something that appears to be
25 taking on a different context that than I had

1 believed. I want to make sure that what I'm
2 saying is precisely correct, because this is
3 something to be careful with.

4 MR. TEITELBAUM: And these are
5 e-mails between yourself and Darren Dopp?

6 THE WITNESS: Any e-mails.

7 MR. TEITELBAUM: This includes
8 all e-mails?

9 THE WITNESS: Not e-mails between
10 me and my wife or my kids.

11 But I mean, any relevant e-mails
12 that could shed light on what, if any
13 involvement, that I had.

14 MR. TEITELBAUM: And did they
15 constantly review all of the e-mails, or just
16 e-mails between you and particular people?

17 THE WITNESS: I do not know.

18 MR. TEITELBAUM: And what was the
19 result of that review?

20 THE WITNESS: That the factual
21 record, as I began to understand it then, and
22 as has been stated by me, is what emerged.

23 MR. TEITELBAUM: And were any
24 e-mails deleted?

25 THE WITNESS: No.

1 MS. HIRSHMAN: Do you know?

2 THE WITNESS: Not that I'm aware
3 of.

4 And I'm firmly of the view that
5 you can never really delete e-mails. They
6 exist somewhere out there, somewhere in
7 cyberspace on some server.

8 You can't really eliminate it.

9 MR. TEITELBAUM: But you have no
10 knowledge of any deletions having occurred?

11 THE WITNESS: No, absolutely not.

12 MR. TEITELBAUM: Do you have any
13 knowledge of any documents being destroyed in
14 connection with this Commission's
15 investigation on members of the executive
16 staff.

17 THE WITNESS: None whatsoever.

18 None, no behavior like that would
19 have been tolerated.

20 Q You were shown earlier
21 Commission's 1 through 5, which I'm going to
22 call the itineraries of Joseph Bruno.

23 A I thought it was 4.

24 Q You were shown 1 through 4 and 5
25 earlier.

1 A Okay.

2 Q And there was a commentary in the
3 Attorney General's report that in speaking
4 with the former Superintendent of the State
5 Police, they had concerns about these
6 documents as presenting security risks in
7 their release.

8 Are you aware of that within the
9 report?

10 A Okay.

11 Q Yes?

12 A Yes.

13 Q And as you look at these
14 documents, it is my understanding that you
15 provide your own schedules, or did provide
16 your own schedules on a fairly regular basis
17 for public consumption.

18 A That is correct.

19 Q And are these schedules
20 dramatically different than the ones that you
21 provide?

22 A Yes.

23 Q And how so?

24 A Much shorter.

25 Q When you say "much shorter"?

1 A I had more meetings on my
2 schedule.

3 In terms of telling the public
4 where I am, or when I'm going to be there,
5 from a security perspective, no, they do not
6 differ.

7 And my schedule was, when I was
8 Governor, provided, I believe, in its
9 entirety.

10 Q When you came into office as
11 Governor, did anyone from your staff
12 communicate with the State Police concerning
13 the release of your schedules to the public?

14 A I do not know for certain, but I
15 can imagine -- I imagine somebody must have.

16 Q Did you ever become aware of any
17 communications between Darren Dopp,
18 requesting of the State Police, "Are there
19 any security concerns with us releasing his
20 schedule"?

21 A I do not.

22 But let me say this. The State
23 Police, I believe, was aware that my schedule
24 was released publicly.

25 Q Did anyone at the State Police

1 ever voice to you concerns over the openness
2 of your schedules and itineraries with
3 members of the public?

4 A No.

5 Q And you are not aware of them
6 communicating with the Chamber staff on that
7 issue?

8 A I'm not aware of any such
9 communication.

10 Q Are you aware of any documents
11 that exist pertinent to this investigation
12 that we have not received?

13 A I'm not aware of any documents
14 anywhere that you haven't received, pertinent
15 or not.

16 MS. TOOHER: I think we're done.

17 MS. HIRSHMAN: Can I ask just one
18 question, to clarify, or can I ask you to ask
19 a question to clarify?

20 MS. TOOHER: You can ask a
21 question.

22 MS. HIRSHMAN: Let's go off the
23 record.

24 (Recess had.)

25 MS. HIRSHMAN: Can we go back on

1 the record.

2 MR. TEITELBAUM: Mr. Spitzer, you
3 wanted to add something with respect to
4 Exhibits 4, 5 and 6?

5 THE WITNESS: Sure.

6 Merely that my schedules that
7 were released publicly are slightly different
8 in form, in the sense that they have dates,
9 times, locations of meetings, and often, the
10 participants in the meetings.

11 These schedule Exhibits 1 through
12 5 talk about transportation from one location
13 to another, whereas my schedules are more
14 akin to traditional schedules that actually,
15 with greater specificity, indicate where and
16 when I will be at a particular location.

17 BY MS. TOOHER:

18 Q And I'm sorry, this is just a
19 follow-up on that issue.

20 You indicated you had never seen
21 these documents before?

22 MR. TEITELBAUM: 4, 5 and 6?

23 MS. TOOHER: 1 through 5.

24 MR. TEITELBAUM: 1 through 5.

25 A That is correct.

1 Q And that you were not provided
2 the documents to review prior to the release
3 to the Times Union?

4 A That is correct. As I said
5 earlier, to the extent that these were the
6 documents provided responsive to the FOIL, I
7 did not see those, the materials turned over
8 to the TU before they were turned over, have
9 not seen them until today, when you provided
10 them to me, was never shown the materials
11 that were gathered, nor asked to review them
12 prior to their review.

13 Q Did you ever ask if the documents
14 that were being released were public
15 documents?

16 A In those words, no. My
17 statements to Darren were, "This is public
18 information," not as a question, but as it
19 related to the general subject, use of the
20 plane is always something the public hears
21 about, knows about, knows who flies it, when
22 and where.

23 This is not information that is
24 kept from the public.

25 MS. TOOHER: We are done at this

275

1 time.

2 Thank you for coming in.

3 (Time noted: 4:30 o'clock p.m.)

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C E R T I F I C A T I O N

I, STEVEN KLEIN, a Certified
Shorthand Reporter and Notary Public, within and
for the State of New York, do hereby certify that
I reported the proceedings in the within-entitled
matter, on May 9, 2008, at 123 William Street,
New York, New York, and that this is an accurate
transcription of these proceedings.

IN WITNESS WHEREOF, I have hereunto
set my hand this day of ,
2008.

STEVEN KLEIN

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